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The decision of the case of Equitable Life Assurance Society v. Greef, in which was involved the question as to the division of the company's surplus fund, is of great interest and importance to life insurance companies and policy holders generally. The facts are as follows: Greef, who is a resident of the city of New York, insured his life in the Equitable Company in the sum of $20,000 by an annual dividend endowment policy having fifteen years to run. On May 2, 1897, the policy matured, and the company paid over to the assured $20,000 and accumulated dividends to the amount of $3,932. Mr. Greef claimed that the company was withholding a portion of the surplus to which he was entitled, and sued for a further dividend of $7,087, being his share of the surplus amounting in all to some $40,000,000 or $50,000,000. To this the company demurred, setting forth that the plaintiff did not state facts sufficient to constitute a cause of action. The Supreme Court sustained the demurrer, and the Appellate Division reversed the decision. The opinion, by the Court of Appeals, was written by Judge Martin, and is concurred in by all the other members of the court. It confirms the decision of the trial court, and holds, in the first place, that the plaintiff cannot maintain an action interfering with the business of the defendant with the approval of the attorney-general. Regarding the claim that the complaint did not state facts sufficient to constitute a cause of action, Judge Martin said: "By the terms of plaintiff's contract, he expressly ratifies and accepts the principles and methods which were from time to time adopted by the defendant for the distribution of such surplus. The plaintiff's claim that the whole surplus should be distributed cannot be sustained if it is in conflict with the provisions of the contract between the parties without making a new contract for them, which the court will not do. It is to be observed that the agreement was that the plaintiff was to participate not in the whole surplus, but in the distribution of the surplus, or, in other words, in the surplus which, according to its methods and principles, was to be distributed."

In regard to the surplus, the court held that "until the distribution was made by the officers or managers of the defendant, the plaintiff had no such title to any part of the surplus as would enable him to maintain an action at law for its recovery. We think the principle which controls the disposition of surplus earnings of a stock corporation is applicable here. In these cases it has often been held that until dividends have been declared a stockholder has no right of action at law to recover any part of the funds applicable for that purpose. In a sense, all the funds in the possession of a mutual insurance company, over and above its immediate and present liabilities, may be regarded as surplus, yet it is not for that reason understood as belonging to, or to be immediately distributed among the policy holders, either by them or by the company. The word 'surplus,' like the word 'liabilities,' has a special meaning which has arisen in this branch of the insurance business. Such surplus could be held by them not only for the protection of their policy holders, but as an inducement to the public to insure. In the absence of all fraud, all the acts of the officers are conclusive."

This decision, nominally in favor of the company, but really in favor of all policy holders, seems to be not only in conformity to explicit law, but also in harmony with the principles of justice. That permanence which is of prime importance in a corporation, issuing contracts that may run for a generation, would be impossible if Greef's contention were sustained. If a life insurance company were to distribute all its surplus, it would become insolvent in the first panic that caused shrinkage in the market value of assets. The policy holders of insurance companies, who clearly comprehend the character of their contracts, will be gratified with this decision, which in effect prohibits a single policy holder from taking with him, when his policy matures, any portion of the surplus belonging to those whose policies have not matured. It also confirms the contention of the companies that distribution of surplus must be made by them in accordance with the terms or their policies.

NOTES OF IMPORTANT DECISIONS.

CONTRACT—DAMAGES—BREACH OF CONTRACT FOR ADOPTION.—In Sandham v. Grounds, decided in the United States Circuit Court of Appeals, Third Circuit, it was held that the measure of damages for breach of a contract by one person to adopt another and make the latter an heir, under the law of Pennsylvania, is not the value of the share of the promisor's estate at his death which would have been inherited by the promisee, but the value of the services rendered or outlay incurred by the promisee on the faith of the promise, with interest. It was further held that where a contract for adoption was to be performed in a certain State, and the estate to which the person to be adopted would thus have become an heir is there situated, the law of such State governs as to the measure of damages for a breach of the contract. The court said: "The plaintiff in this action brought her suit against the defendant, as administratrix of Samuel Smith, to recover damages for the breach of a contract entered into between the plaintiff and said Smith in his lifetime, in and by which said Smith agreed that he would take the plaintiff (who was his niece) from her home in Ireland to America, adopt her as his daughter, and that he would so provide that at his death she should receive one-half part of his property. The plaintiff accordingly came to America with her uncle, and for a short time continued to live under his care and protection. During her stay she rendered no service, and after her departure, at the end of some sixteen months, she did not return to him. Smith never took any steps looking to the adoption of the plaintiff as his daughter according to the form of the statute of the State of Pennsylvania, but did so adopt an inmate of his house, who was a relative of his wife. The contract between Smith and the plaintiff was to be performed in the State of Pennsylvania, where Smith resided, and where he afterwards died intestate. Upon the trial of the cause the learned judge charged the jury, *inter alia*, as follows: 'Upon the question of the rule of damages the court charges the jury that for the breach of the alleged contract the measure of damages is not the value of decedent's estate at the time of his death, but the value of the services the plaintiff rendered the said Smith while she remained with him, and also any pecuniary outlay or expense she was subject to or incurred, with interest.'

"To this part of the charge exception was taken, and the only question argued before us was whether the measure of damages was correctly stated. We cannot doubt that the damages in this case must be determined by the laws of the State of Pennsylvania, where the contract was to be performed, and where the assets of Smith's estate are properly distributable. We find, upon reviewing the decisions of the highest court of that State, that the question here at issue was set at rest in Graham v. Graham's Exrs., 34 Pa. St. 475, in which the case of Jack v. McKee, 9 Pa. St. 240, holding a contrary doctrine, was carefully considered and expressly overruled. In Graham v. Graham's Exrs., *supra*, the decedent agreed with two distant relations that, if they would come and live with him, they should share his property equally with his nephews after his death. He failed to carry out his agreement, and suit was brought against his executors to recover the value of the promised shares of his estate. The plaintiff offered to prove the value of the decedent's estate, and the share of each nephew, for the purpose of showing the damage sustained by the plaintiff. To this offer the defendants objected on the ground that the measure of damages was the value of the services rendered, and was not to be governed by the value of the defendant's estate.

"Strong, J., said: 'Without pressing the insufficiency of the proof of the contract, * * * it by no means follows that the measure of damages in an action for its breach is the value of the thing promised at the time of the breach. Jack v. McKee, *supra*, is no longer a rule. This court has returned from the departure which was made in that case.'"

MASTER AND SERVANT—INJURY TO EMPLOYEE—RISKS ASSUMED.—In Casey v. Grand Trunk Ry., 44 Atl. Rep. 92, decided by the Supreme Court of New Hampshire, it was held that where plaintiff, a night employee in defendant's coal yard, knew that the yard was uncovered, the kind of light furnished, the way a crust of ice and snow usually formed on the coal bank and fell down when undermined by shoveling beneath it, and was thoroughly familiar with all the surrounding circumstances, he had assumed the risk, and could not recover for injuries received from the falling of the crust. The court said: "The negligence alleged was that the coal yard where the plaintiff was injured was not covered; that an insufficient number of hands was employed; that the place was not properly lighted; and that the day gang did not break down the crust on the coal bank for the night gang, as was the rule or practice. The plaintiff had been for eight years in the defendant's service in the same capacity as when injured. He knew the yard was uncovered, the number of hands in the day and night gangs, the kind of light furnished, the way the crust formed in the coal bank and fell or slid down, and was thoroughly familiar with all the surrounding circumstances. On these facts it would seem that the motion for a nonsuit should have been granted. The plaintiff was fully acquainted with the situation and the danger of his service; and the risk of injury from the falling away of the frozen crust of coal was assumed by him when he entered, or decided to remain in, the service of the defendant. It was implied in his contract that he assumed all apparent risks, as well as those ordinarily incident to the service, and that he would bear the special perils which he knew actually to exist in his particular employment. Fifield v.

Railroad Co., 42 N. H. 225, 240; Foss v. Baker, 62 N. H. 247; Hanley v. Railway Co., *Id.* 274; Nash v. Steel Co., *Id.* 406; State v. Railway Co., 65 N. H. 663, 23 Atl. Rep. 525; Bancroft v. Railroad Co., 67 N. H. 466, 30 Atl. Rep. 409. This principle is so well settled that discussion of the foregoing authorities is unnecessary. If there can be any doubt that the plaintiff's injury resulted from dangers which he knew to exist in his employment, it arises from the language of the reserved case that the plaintiff claimed the practice or rule was for the day gang to break down the crust on the coal bank, and that he claimed he relied on this practice on the night of the accident. The doubt, however, disappears when the evidence is examined. The plaintiff had worked at the Gorham yard eight years, four in the day gang and four in the night gang, and was thoroughly familiar with all the surroundings. He was aware that the yard was uncovered. He could perceive whether it was sufficiently lighted or otherwise, and he was familiar with the number of hands employed. His testimony shows that he knew the pile of coal was kept shoveled as nearly perpendicular as possible to avoid the necessity of removing snow, saw this to be the condition of the pile on the night of the accident, and was aware of the danger from the crust breaking off when undermined by the shoveling beneath it. The conclusion is inevitable that, the danger being apparent and known to the plaintiff, the risk was assumed by him. Motion for nonsuit granted."

INSURANCE—EVIDENCE OF PAROL CONTRACT.—In Crawford v. Trans-Atlantic Fire Ins. Co., 58 Pac. Rep. 177, decided by the Supreme Court of California, it was held that, in an action on a fire insurance policy written before, but not delivered until after, the property covered thereby was destroyed by fire, it may be material and competent for plaintiff to show an oral contract existing before the fire, and for that purpose any statements made by the agents of defendant while engaged in the transaction with the plaintiff, and up to the time the policy was delivered, are part of the *res gestæ* and competent; but declarations of such agents made thereafter, when not acting in connection with the business with plaintiff, and which relate wholly to the past transaction, are hearsay, and their admission is error. "The main question for determination," says the court, "was whether all the acts of said agents, taken together, amounted to an execution of the policy, so that it became obligatory on the defendant. If the policy—as the evidence for plaintiffs tended to show—was the memorial of a contract, which in its essentials had been agreed upon by parol before the fire, and which the parties intended should take effect, according to its terms, on the 2d of May at noon, then certainly the subsequent delivery was sufficient to make the defendant liable on the instrument; its liability thereon probably attached even without actual delivery to the insured or his agent. Lightbody v. Insurance Co., 23 Wend. 18; City of Davenport v. Peoria Marine & Fire Ins. Co., 17 Iowa, 276; Insurance Co. v. Colt, 20 Wall. 560; Yonge v. Society, 30 Fed. Rep. 902; Harrington v. Insurance Co. (S. F. 1658; August 14, 1899), 58 Pac. Rep. 180. If, however, as the evidence for defendant tended to show, there had been, before the fire, no agreement that defendant should insure the building, and issue its policy accordingly—such an agreement as would have made Crawford liable for the premium—then it is equally plain that delivery of the policy after the building had been destroyed, to the knowledge of the parties, could not impart to the instrument any effect whatever. Civ. Code, secs. 2527, 2528; Clark v. Insurance Co., 89 Me. 26, 35 Atl. Rep. 1008; People v. Dimick, 107 N. Y. 13, 14 N. E. Rep. 178. It was, therefore, important evidence for the plaintiffs, if they could show that defendant considered or admitted at any time that the contract was complete, and the risk had attached."

ESTOPPEL BY DECLARATIONS.—In Crosby v. Meeks, 33 S. E. Rep. 913, decided by the Supreme Court of Georgia, it was held that where there is a dispute between a company and an individual as to which of the two owns a tract of land, and the agent of the company has falsely and fraudulently represented to such other claimant that his company has title to the property, and "back deeds" to the same, and, acting upon this, such other claimant purchases from the company an interest in the land, and receives from the company a deed thereto, which interest he, for value, transfers by deed to an innocent purchaser, who likewise acts upon the representations made by said agent, the agent is afterwards estopped from setting up title in his own name against such purchaser. This is true though such agent may afterwards acquire a perfect legal title to the property, not derived from either of the claimants above mentioned. The court said in part:

"Counsel for plaintiff in error seem to rely upon the position that Crosby, as an individual, was a stranger to this transaction between the lumber company and Denton, and that, as strangers can neither take advantage of nor be bound by an estoppel, the binding effect was between the immediate parties or their privies in blood, in law or in estate. As a proposition of law there can be no question about the soundness of the principle that when one makes a false representation touching the validity of the title to property that he sees is about to be transferred to an innocent purchaser, upon which representation the latter has acted in good faith, and upon the faith of which he has bought the property, the former cannot thereafter set up as against such purchaser or his vendee or privies in estate any claim in himself adverse to what he had previously commended as a perfect title. It manifestly makes no difference in what capacity he made such representation, whether on his own account, acting in his individual interest, or whether he was acting as agent in the interest of

another. It is true that for the fraudulent misrepresentations of an agent acting in the course of his employment the principal is also bound, but it does not follow from this that the agent is not himself likewise individually and personally liable. Instead of being a stranger to the transaction, he is a direct participant in it, and in making the false representations he is responsible individually for the perpetration of the fraud, and is liable in damages as an individual to anyone who has acted upon such representations to his injury. It was accordingly held in the case of Campbell v. Hillman, 61 Am. Dec. 195, that an agent is responsible individually to a purchaser for fraud committed by him in the sale of property, although he does not profess to sell the property as his own, but acts throughout in his capacity as agent. It was further held in the same case that 'an agent is not absolved from liability for misrepresentation as to his principal's title to slaves by the mere fact that he informed the purchaser that his principal derived title under a will, which the purchaser had sufficient time and opportunity to examine, where the purchase was made upon the faith of the agent's representation that his principal had a good title, and the representation was calculated to induce belief and prevent further inquiry.' In Mechem, Ag. sec. 573, *et seq.*, this question is lucidly discussed, and the personal liability of an agent for representations made in behalf of his principal is clearly recognized. Among other things on this subject, that author says: 'It does not relieve the agent that the wrong was committed with the knowledge of the principal, or by his consent or express direction, because no one can lawfully authorize or direct the commission of a wrong. *A fortiori* is it no defense that the agent, in committing the wrong, violated his instructions from his principal. Neither is it material that the agent derives no personal advantage from the wrong done. All persons who are active in defrauding or injuring others are liable for what they do, whether they act in one capacity or another.' It is really the person who directly participates in the perpetration of the fraud, whether he is acting for himself or another, as principal or agent, who is especially and particularly liable to the party wronged. In entire accord with these views are the decisions of this court in the cases of Nussbaum v. Heilbron, 63 Ga. 312, and Roberts v. Davis, 72 Ga. 819. From these principles we think it necessarily follows that if the defendants in this case had acted upon the false and fraudulent representations of Crosby, acting as agent for the lumber company, and in consequence had been forced to surrender the possession of land bought by them in good faith, a right of action for damages in their favor against the agent as an individual could clearly have been maintained. If this be true, then certainly they have a right to defend a suit instituted by Crosby himself, the success of which would cause him to reap the fruits of his own wrong."

NEGLIGENCE—EXPLOSION OF NITROGLYCERINE.—The Supreme Court of Ohio hold, in Bradford Glycerine Co. v. St. Mary's Woolen Mfg. Co., that nitroglycerine is a substance usually recognized as highly explosive and dangerous, the storage of which at any place is a constant menace to the property in that vicinity. And one who stores it on his own premises is liable for injuries caused to surrounding property by its exploding, although he neither violates any provision of the law regulating its storage nor is chargeable with negligence contributing to the explosion, and that a right of action will exist in favor of all property within the circle of danger, and the fact that the property injured was not on premises adjacent to those on which the explosive substance was stored will not defeat a recovery. The court says:

"The cause was submitted to the court of common pleas on the following agreed statement of facts: 'It is hereby stipulated that this case will be submitted to the court upon the following statement of facts as the evidence in this case: Plaintiff is a corporation organized under the laws of Ohio, and the owner of real estate whereon buildings are erected in the village of St. Marys, Auglaize county, Ohio, and was such at all times stated in the petition filed in this action. The defendant is a partnership organized for the purpose of doing business in the State of Ohio, and owning property therein. On or about January 25, A. D. 1896, the defendant was the owner of a magazine and contents containing about fifty quarts of nitroglycerine used by the defendant in its business of manufacturing, storing, and vending nitroglycerine, which magazine was situated on a tract of land belonging to one W. G. Kishler, and situated something over a mile west of the buildings so owned by the plaintiff in St. Marys, Ohio, and situated about one-fourth of a mile distant from the corporation line of the village of St. Marys, Auglaize county, Ohio. That on or about said 25th day of January, A. D. 1896, while one of the defendant's servants was upon the premises upon which said magazine was located, engaged in transferring about seven hundred and fifty quarts of nitroglycerine from a wagon loaded with same to said magazine, the said nitroglycerine stored therein, and also the same upon the wagon aforesaid, from some cause unknown to said defendant, exploded with great force and concussion, causing vibrations in the atmosphere sufficient in power and violence to break, shatter, and destroy three plate glass and three common glass in the buildings owned by the plaintiffs aforesaid, of the value of two hundred and forty-four dollars and ten cents, by reason of which explosion and the breakage of said glass the plaintiffs were injured and damaged to the extent aforesaid. That nitroglycerine is a dangerous substance, and likely to explode. That demand of payment of said sum has been made by the plaintiff to the defendant, and payment thereof has been refused." This agreed statement

of facts does not show that the plaintiff in error violated any statute of the State, or was in any degree negligent in handling or storing the explosive substance involved. It was nitroglycerine, a well-known and highly-explosive agency, which the agreed statement of facts shows 'is a dangerous substance, and likely to explode.' Is one who brings upon his own premises such agency liable for damages caused by its exploding, although such owner is not chargeable with either want of care or an unlawful act in connection with the casualty? This exact question has not heretofore been considered by this court, although a number of cases have been decided by the court that bear a general resemblance to it. Fuel Co. v. Andrews, 50 Ohio St. 695, 35 N. E. Rep. 1059; Water Co. v. Olinger, 54 Ohio St. 532, 44 N. E. Rep. 238; City of Tiffin v. McCormack, 34 Ohio St. 638. The tendency of these cases is toward holding the parties charged with the management of dangerous substances to a strict liability. In City of Tiffin v. McCormack, 34 Ohio St. 638, this court held: 'Where the owner of a stone quarry, by blasting with gunpowder, destroys the buildings of an adjoining landowner, it is no defense to show that ordinary care was exercised in the manner in which the quarry was worked.' And the same view of the liability of one who, by blasting rocks, cast fragments thereof against the house of another, was taken by the Court of Appeals of New York in the case of Hay v. Cohoes Co., 2 N. Y. 159, and Tremain v. Cohoes Co., *Id.* 163. The court in the first case decided that: 'The defendants, a corporation, dug a canal upon their own land for the purposes authorized by their charter. In so doing it was necessary to blast rocks with gunpowder, and the fragments were thrown against and injured the plaintiff's dwelling upon lands adjoining. Held, that the defendants were liable for the injury, although no negligence or want of skill in executing the work was alleged or proved.' And in the second case that: 'The defendants dug a canal upon their own land, and in executing the work blasted the rocks so as to cast the fragments against the plaintiff's house on contiguous lands. Held, in an action on the case brought to recover damages for the injury, that evidence to show the work done in the most careful manner was inadmissible, there being no claim to recover exemplary damages, and the jury having been instructed on the trial to render their verdict for actual damages only.' Counsel for plaintiff in error contend that in respect of the matter under consideration the analogy between the act of blasting rock on one's premises and storing a dangerous explosive thereon in not close. In the one case the damage is caused by fragments of rock being hurled upon or against the property injured, while in the other case the damage is caused by violent atmospheric vibrations from the explosion. If, however, the explosion caused fragments of the building wherein the explosive material was stored, or other solid substance, to be thrown against the property injured, thereby producing damage, the analogy might be more easily perceived. True, it might be said that in the one case the party to be charged was actively engaged in the work that caused the injury, while in the other case he was simply using the premises to store the dangerous substance, not intending that it should explode. These distinctions, however, do not seem to be material. The right of the owner of a stone quarry to blast rock therefrom where that is necessary to a profitable use of his property, or the right of one to make an excavation of any kind on his own property where blasting is a proper and usual mode to accomplish the owner's purpose, would seem to be of as high and perfect a character as is the right of an owner to use his premises as a storehouse for explosive substances. Upon what principle should an owner of property hold it subject to the right of another to store on his own premises adjacent to it nitroglycerine, but not subject to the right of that other to blast rock? If one may store nitroglycerine on his own premises, and not be liable to adjacent property for damages caused by its exploding unless he has been negligent, while in the case of the owner of the quarry the latter is liable for an injury to an adjacent property resulting from blasting, although free from negligence, then it is plain that the adjacent proprietor holds his property in the one case subject to the right of his neighbor to store a dangerous explosive, but not to the right of his neighbor to blast rock. In the first supposed case the liability grows, not out of the storing of the dangerous explosive, but out of the negligence of the person storing it, while in the last supposed case, the liability springs from the manner in which the property is used; *i. e.*, the blasting and negligence need not be shown. If, in the latter instance, the party blasting is liable for injuries that resulted from his act, however careful he may have been, the reasons for absolving the former from liability, unless he has been negligent, are not apparent. The blasting doubtless is a menace to adjacent property, but so is the storing of a highly explosive substance.

"In this case the premises on which the explosive substance was stored and the premises on which the building stood that was injured do not appear to have been adjacent. They were a mile apart, and, for anything that appears in the record, many parcels of real estate owned by third persons may have intervened. That, however, does not seem to be material either. One who, in blasting rock, should cast fragments across a strip of adjacent land owned by a third person against the windows of a more remote proprietor would hardly be heard to say in defense of his act that the property injured was not adjacent. Whatever duty he owed to his neighbor extended equally to all who might fall within the lines of danger. So it would seem that in the case of explosives the right of all within the circle of danger should be equal, irrespective of whether the property injured was adjacent to the premises

upon which the material was stored. The liability of one who, for his own purpose, brings upon his own premises substances dangerous to others if not kept under control, was exhaustively discussed by the judges of England in the case of Fletcher v. Rylands, 1 Exch. 265, and afterwards, on a review of the case, in the house of lords. L. R. 3 H. L. 330. In the exchequer chamber Justice Blackburn, in giving judgment, employed the following language: 'We think that the true rule of law is that the person who, for his own purposes, brings on his lands, and collects and keeps there, anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of *vis major*, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems, on principle, just. The person whose grass or corn is eaten down by the escaping cattle of his neighbor, or whose mine is flooded by the water from his neighbor's reservoir, or whose cellar is invaded by the filth of his neighbor's privy, or whose habitation is made unhealthy by the fumes and noisome vapors of his neighbor's alkali works, is damnified without any fault of his own; and it seems but reasonable and just that the neighbor who has brought something on his own property which was not naturally there, harmless to others so long as it is confined to his own property, but which he knows to be mischievous if it gets on his neighbor's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should, at his peril, keep it there so that no mischief may accrue, or answer for the natural and anticipated consequences. And upon authority this, we think, is established to be the law whether the things so brought be beasts, or water, or filth, or stenches.' This language was approved in the house of lords when the cause came up for consideration there, Lord Cransworth saying: 'My lords, I concur with my noble and learned friend in thinking that the rule of law was correctly stated by Mr. Justice Blackburn in delivering the opinion of the exchequer chamber. If a person brings or accumulates on his land anything which, if it should escape, may cause damage to his neighbor, he does so at his peril. If it does escape, and cause damage, he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent the damage.' The doctrine in this case (Fletcher v. Rylands, *supra*) has not been accepted by some of the courts of this country. Marshall v. Welwood, 38 N. J. Law, 339; Swett v. Cutts, 50 N. H. 439; Coal Co. v. Sanderson, 113 Pa. St. 126, 6 Atl. Rep. 453; Losee v. Buchanan, 51 N. Y. 476; but has been approved in Shipley v. Fifty Associates, 106 Mass. 194; Gorham v. Gross, 125 Mass. 232; Mears v. Dole, 135 Mass. 510; Cahill v. Eastman, 18 Minn. 324, Gil. 292. In the case above cited from New York—Losee v. Buchanan, 51 N. Y. 476—and that from New Jersey—Marshall v. Welwood, 38 N. J. Law, 339, a casualty occurred from an explosion of steam boilers.

"To my mind, the analogy between the act of storing so highly explosive and dangerous an agency as nitroglycerine on one's premises and that of conducting a business thereon, which requires for its successful operation the use of steam, is not complete, although each is an explosive. Doubtless both are dangerous agencies, when control over them is lost. The use of steam has, however, so generally been employed in every productive industry that every owner of real property may reasonably be held to contemplate the contingency of its being employed upon adjacent premises, and to enjoy his property subject to that risk. In a great city like New York or Chicago, where numerous and varied industries are conducted, there are doubtless many thousands of places where steam is employed. The entire population of such a city is interested, and most of them directly or indirectly benefited by these industries. Large numbers of them labor by day in factories where steam furnishes the motive power, and many of them sleep at night in buildings containing engines in active operation. The modern steam boiler and engine cannot be said to be such a menace to property and human life as to constitute a nuisance *per se*. They cannot, as such, be driven from the centers of population. Not so, however, with gunpowder and nitroglycerine. These latter agencies, on account of their dangerous character, may be, and usually, if not universally, are, driven into the suburbs of towns and cities, remote from human habitations and valuable structures. Under the circumstances that surround the productive arts and industries of to-day, a modification of the strict rule of liability in favor of those who employ steam in such arts or industries may not be inconsistent with its assertion against those who store gunpowder and nitroglycerine, or blast rocks, adjacent to the property of others. That public policy which seeks to secure the welfare of the many may demand such modification. Whether upon such grounds, or for any other reasons, such a modification of the rule should obtain in the case for the use of steam is not, of course, before the court, and the question is only considered in this brief way to show that there may be no irreconcilable conflict between the cases that have absolved the owners of boilers from liability for the consequences of an explosion occurring without their fault, and the conclusions reached by us in the case under consideration. Doubtless, gunpowder, nitroglycerine, and other dangerous explosives are useful agencies in many industries, as well as steam; but conceding that, in the case of steam boilers, the extensive

and varied uses to which steam is devoted, and the comparatively slight danger arising from its use, require, on principles of public policy, which regards the interests of the great body of the people, that every owner of real property should be held to possess it subject to the right of his neighbor to erect a manufactory and employ steam on adjacent premises, yet it does not necessarily follow that such owner should possess his property also subject to the right of his neighbor to erect a powder or nitroglycerine magazine in his vicinity. The existence of a manufacturing establishment, although it employ steam as a motive power, may be, and doubtless is, in many instances, a positive benefit to real property in its vicinity, and instead of diminishing may enhance its value; while, on the contrary, the erection and use of a nitroglycerine magazine could have no other than a disastrous effect on the value of all real property in its vicinity. We think, therefore, the right to maintain the former may be placed upon grounds that cannot apply to the latter. The general doctrine upon the subject stated in Fletcher v. Rylands, *supra*, seems to be just and fair in its general operation. The syllabus of that case, as announced by the house of lords (L. R. 3 H. L. 330), seems to recognize a distinction in this respect between an ordinary and an extraordinary use of his premises by their owner; and, had that learned tribunal then had before it a case where damages were sought on account of injuries resulting from an explosion of a steam boiler in a manufacturing establishment, it might have denied the liability in the absence of proof of negligence, on the ground that the owner was using his premises in an ordinary manner. But, whatever might have been done by the house of lords in the case supposed, we are of the opinion that the storing of nitroglycerine should be deemed to be an extraordinary and unusual use of property, and we can see no principle upon which an exception to the general doctrine laid down in Fletcher v. Rylands, *supra*, can be held to exist in favor of one who stores upon his own premises that or any other dangerous explosive."

LIABILITY FOR DUES OF MEMBERS OF CLUBS AND LODGES.

Can a club or lodge enforce the payment of dues by an action at law, or is its remedy limited to the suspension or expulsion of a member for non-payment? This question is frequently discussed, but has not often been before the higher courts, as most societies content themselves with depriving a non-paying member of the benefits and privileges of membership. But the right to recover dues in any case where an agreement to pay such dues has been made,[1] or where express authority to charge dues is conferred by a statute,[2] seems to have been affirmed in all cases where such right has been questioned in the higher courts. It was decided, at an early day, that an agreement to pay dues to an association formed for business purposes was binding at law, although the amount of such dues was unascertained, and was to be determined by future assessment.[3] It has also been decided that admission to membership in a society is a sufficient consideration for a promise to pay dues.[4] Where any element of insurance enters into the society, it would seem that well-settled principles require that one should pay all dues and assessments levied while he continues a member. Thus, in a case in New York,[5] the defendant applied for membership in a mutual benefit association, whose by-laws provided, "that upon the death of any member of the association, it shall be the duty of the secretary to notify the members of the same, and thereupon each member shall, within thirty days after such notification, pay to the secretary the amount required by the rules of the association." In his application for membership, the defendant agreed to accept and pay for a certificate, subject to all the conditions of the by-laws and regulations of the association. Afterwards, while he was yet a member, he was notified of an assessment levied on account of the death of another member. He refused to pay this assessment, and an action was brought against him to compel payment. The supreme court held that his certificate of membership was a sufficient consideration for his promise to pay assessments, and that an action would lie against him for the same.[6]

In a Pennsylvania case,[7] the receiver of an association formed for paying death benefits of its members by assessments to be levied on

[1] Ryan v. Cudahy, 50 Ill. App. 568; Palmetto Lodge v. Hubbell, 2 Strobh. (S. Car.) 457; Elm City Club v. Howes, 42 Atl. Rep. 392.

[2] Freedman v. Chamberlain, 24 N. Y. Supp. 388, 70 Hun, 193; Chartered Institute v. Lockwood, 6 Rep. (Eng.) 219 (1895).

[3] Worcester Turnpike Co. v. Willard, 5 Mass. 80; Taunton, etc. Turnpike Co. v. Whiting, 10 Mass. 327.

[4] McDonald v. Ross Lewin, 29 Hun (N. Y.), 87; Palmetto Lodge v. Hubbell, 2 Strobh. (S. Car.) 457.

[5] McDonald v. Ross Lewin, 29 Hun (N. Y.), 87.

[6] McDonald v. Ross Lewin, 29 Hun (N. Y.), 87.

[7] New Era Life Association v. Rossiter (Penn.), 19 Atl. Rep. 140.

the survivors, sued a member to recover assessments for certain deaths among the members of the association, between the time that the defendant joined it and the time that his policy elapsed. The trial judge instructed the jury that "if he (defendant) was insured and these deaths occurred, and he was assessed and notice given him, he ought to be made to pay." The supreme court affirmed the case on the opinion expressed by the trial judge in his charge to the jury. Whatever the character of the club, a person who has enjoyed the benefits of membership, during the time for which dues are to be paid, should not be permitted to refuse payment, when the dues are necessary to meet the claims of creditors. Thus, in another case in New York, a member of an athletic society, which had become insolvent, was held liable for all dues, which became payable up to the date of its insolvency, in an action by a receiver appointed at the suit of creditors,[8] on the ground that the statute under which the society was organized provided for its support by dues to be paid by the members. But, perhaps, the strongest case in the books is that of Palmetto Lodge v. Hubbell.[9] That case was a suit by a lodge of the Independent Order of Odd Fellows to recover weekly dues for the period of time during which a member was under suspension for failure to comply with the rules of the society. On his admission into the society, the defendant signed its constitution and by-laws, which contained the provision that he did "thereby agree to support the same, and pay all legal demands against him, so long as he continued a member of the lodge."

The lodge afterward adopted a by-law, imposing on each member the payment of certain weekly and yearly contributions and providing that if a member failed to pay them, "he shall be suspended during the pleasure of the society, and on reinstatement he shall pay the amount standing against him at the time of his suspension, together with the whole sum to which he would have been subject had he not been suspended." The court took a distinction between suspension and expulsion, holding that the former is only a temporary privation of rights and benefits, which did not affect the member's liability under his contract to support the society. The court said: "Conceding that the liability of the defendant depends on a contract requiring a consideration, the consideration of his undertaking to support the constitution and by-laws and pay all legal demands was that he should be admitted a member of the lodge and possess the rights and capacity of a corporator. Certain privileges and benefits were incident to membership. * * * The defendant enjoyed all the privileges of a member until he was in default and so continued after notice and request for more than a year." The nonsuit which the lodge had suffered in the circuit court was set aside.

And in a New York case,[10] the members of a club which suspended on account of insolvency in February, were held liable in law at the suit of the receiver for their semi-annual dues which were payable in advance on the first day of January. The supreme court pronounced no opinion further than to declare the liability. In the unreported cases of the Commercial Club of Indianapolis v. Meyers, and the Commercial Club v. Bell, in the circuit and superior courts, respectively, at Indianapolis, Indiana, the defendants had each signed an application for membership in the plaintiff club, by which they agreed to pay "such annual dues as may be prescribed by the by-laws. This obligation is payable with attorney's fees," etc. They defended on the ground that the above provision was so uncertain as to time and amount as not to be a binding promise, that the by-laws provided for the expulsion of a member who failed to pay dues and, therefore, the club was confined to that remedy; and that the by-law under which the dues were imposed was not adopted until long after they made application for membership, and, therefore, was not covered by their written agreements. A judgment was given against each defendant for unpaid dues for a period of three years, and a fee for the plaintiff's attorney. In a case before the Supreme Judicial Court of Maine,[11] that court held the defendant liable for unpaid dues for six quart-

[8] Freedman v. Chamberlain, 24 N. Y. Supp. 388, 70 Hun, 193. See Bennett v. Lathrop (Conn.), 42 Atl. Rep. 634.

[9] Palmetto Lodge v. Hubbell, 2 Strobh. (S. Car.) 457.

[10] Freedman v. Chamberlain, 24 N. Y. Supp. 388, 70 Hun, 193.

[11] Elm City Club v. Howes, 42 Atl. Rep. 392.

ers at the suit of the trustees of an organized, unincorporated association of which he was a member. The defendant had signed the by-laws of the association, which provided for the payment of dues, but left the amount to be fixed annually. A statute authorized such an association as the plaintiff to sue in the name of its trustees. It was held that the action of *indebitatus assumpsit* could be maintained to recover the unpaid dues, and that the defendant's written agreement to pay dues was properly admitted in evidence to sustain the action. In a recent case in New York,[12] the defendant was held liable for dues as a member of the plaintiff club for a year after the time he claimed to have resigned, clear proof being offered of the fact that his letter of resignation never reached the club. The liability of defendant in case he should be held to be a member of the club does not seem to have been contested. On the other hand, it has been held that clubs and societies, organized for the benefit and protection of their members without any purpose of trade or profit, do not come within any of the ordinary rules relating to partnership or joint stock concerns.[13] And it was said by Judge Miller, of the New York Court of Appeals, on one occasion, by way of argument, with reference to the rights of members of a society of the "Independent Order of Rechabites," which was organized as a social club and to care for its members in case of sickness or death, that "associations of this description are not usually partnerships. There is no power to compel payment of dues, and the rights of the member ceases when he fails to meet his annual subscription."[14] But as the question of the club's right to enforce payment of dues was not presented in that case, this statement may be dismissed as mere *obiter dicta*. These authorities would seem to establish the following principles: Where the statute under which a voluntary association for the purpose of conducting a lodge or club is organized, provides for its support by the payment of dues to be levied by the club, or where the constitution of the club provides for levying such dues and a member has executed an agreement to pay dues as one of the conditions of his admission to membership, the right of the club or lodge to enforce payment of the dues imposed by its by-laws during the period that he continues a member is absolute, and may be enforced by an action at law; and the fact that the by-laws give the club authority to suspend or expel a member for non-payment of dues is no defense to an action to recover them, where the club has not seen fit to pursue that remedy.

LOUIS B. EWBANK.

Indianapolis, Ind.

[12] Building Trades Clubs v. Hausling, 56 N. Y. Supp. 1056.

[13] *In re* St. James Club, 13 Eng. L. & Eq. 589.

[14] Laford v. Deems, 81 N. Y. 507.

CEMETERIES — DISINTERRING BODIES — DEFACING TOMBSTONES—DAMAGES.

JACOBUS v. CONGREGATION OF CHILDREN OF ISRAEL.

Supreme Court of Georgia, July 20, 1899.

1. One who is the owner of the easement of burial in a cemetery lot, or who is rightfully in possession of the same, is entitled to recover damages from any one who wrongfully enters upon such lot and disinter the remains of a person buried therein.

2. In a suit for damages for wrongfully disinterring a dead body, if the injury has been wanton and malicious, or is the result of gross negligence or a reckless disregard of the rights of others equivalent to an intentional violation of them, exemplary damages may be awarded in estimating which the injury to the natural feelings of the plaintiff may be taken into consideration.

3. If a monument or gravestone, which has been erected at a grave, is defaced or removed after the death of the person who erected it, the heirs at law of the person to whose memory the monument or gravestone was erected may recover damages from the one who injures or removes it.

FISH, J.: The defendant in the court below moved to dismiss the plaintiff's petition upon the ground that no cause of action was set out therein. The court sustained the motion, and the plaintiffs excepted. The petition alleged, in substance, that the three plaintiffs are the children of Jacob Jacobus and his wife, Manahan, who had born unto them two other children, Harold and Irene, both of whom died in infancy. In January, 1856, Jacob Jacobus purchased of the defendant, a corporation, owning and controlling certain burial grounds located in the city cemetery of Augusta, a certain described lot or square in such burial grounds, and paid for the same. This lot or square is inclosed by a row of brick. In 1856, the remains of his infant son, Harold, and in 1858 the remains of his infant daughter, Irene, were interred by him on this lot. Jacob Jacobus died in 1862, and his wife in 1894. The remains of the plaintiffs' brother and sister remained undisturbed from the dates when they were, respectively, buried, until 1895, when the defendant,

through its duly appointed and constituted officers, willfully, unlawfully, and without warrant or authority, and without the knowledge of plaintiffs, entered upon such lot, removed the headstones from the two graves, took therefrom the caskets containing the remains of the plaintiffs' brother and sister, opened the caskets, and exposed the contents of the same to the view of people, and then reinterred the remains in an obscure part of the defendant's burial grounds. After removing the headstones and caskets, the defendant sold or gave the lot to another person, and permitted him to bury a body therein. The removal of the bodies of the plaintiffs' brother and sister "to obscure portion of said burial grounds" was "much to the chagrin, mortification, humiliation, insult and injury" of the plaintiffs, and in the removal and the acts accompanying the same "a most serious injury has been done" to the plaintiffs, and an insult inflicted upon them, "which money cannot repair and which time cannot eradicate." The petition prayed that the officers of the defendant corporation be directed and commanded to re-inter the remains of the plaintiffs' brother and sister in the lot from which they had been removed, "in a grave to be walled and securely cemented, as was the grave in which they formerly reposed," and that "the nominal sum of two hundred and fifty dollars, as exemplary damages, be awarded to * * * petitioners, as expenses of bringing these proceedings." At the hearing counsel for plaintiffs stated that, since the filing of the suit, the defendant had complied with the prayer of the petition in reference to reinterring the remains upon the lot from which they had been removed, "and that suit was proceeding for the collection of the expenses of this suit, including attorney's fees."

1. According to the allegations of the petition, Jacob Jacobus, the father of the plaintiffs, purchased the burial lot from the defendant, paid for it, and took possession of it, in the only way that he could, by using it for the purposes for which it was intended—he buried his dead upon it. He had both the possession and the right of possession, and remained in possession until his death. At his death the possession and the right of possession were transmitted to his heirs at law. Having once been established, the possession, unless voluntarily relinquished, continued as long as the graves were marked and distinguishable as such, and the cemetery continued to be used. Hook v. Joyce, 94 Ky. 450; Improvement Co. v. Jenkins, 111 Ala. 135. "The burial of the dead body in a cemetery lot is the only possession, when claimed and known, necessary to ultimately create complete ownership of the easement, so as to render it inheritable; and, so long as gravestones stand marking the place as burial ground, the possession is actual, adverse and notorious." Hook v. Joyce, *supra*. "When one is permitted to bury his dead in a public cemetery, by the express or implied consent of those in control of it, he acquires such a possession in the spot of the ground in which the bodies are buried as will entitle him to an action against the owners of the fee or strangers who, without his consent, negligently or wantonly disturb it. This right of possession will continue as long as the cemetery continues to be used." Improvement Co. v. Jenkins, *supra*. As a general rule, one who purchases and has conveyed to him a lot in a cemetery does not acquire the fee to the soil, but only the easement or license of burial therein. But, as we have seen, so long as he is in the rightful possession of the lot, or holds title to the usufructuary interest therein, he may maintain action against any one who wrongfully trespasses upon it. The rule is well established that one entitled to maintain the action may recover damages from any person who wrongfully trespasses upon, desecrates or invades the burial lot of another. 1 Am. & Eng. Enc. Law (2d Ed.), 794; Trustees v. Walsh, 57 Ill. 363; Meagher v. Driscoll, 99 Mass. 281; Partridge v. First Independent Church, 39 Md. 637; Smith v. Thompson, 55 Md. 5; Thirkfield v. Association, 12 Utah, 76; Hook v. Joyce and Improvement Co. v. Jenkins, *supra*. In the present case the plaintiffs were not only in possession of the lot at the time of the alleged trespass by the defendant, but, as the heirs at law of Jacob Jacobus, they had a complete title to the easement of burial therein by prescription; for the graves containing the remains of their brother and sister had been upon the lot, undisturbed, for nearly 40 years. The presence of these graves, marked with headstones, upon the lot, rendered the possession which commenced in Jacob Jacobus when he buried the first body upon it, actual, adverse and notorious, and it was continuous until disturbed by the defendant in 1895.

"2. In a suit for damages for disinterring a dead body, if the injury has been wanton and malicious, or is the result of gross negligence, or a reckless disregard of the rights of others, equivalent to an intentional violation of them, exemplary damages may be awarded. 1 Am. & Eng. Enc. Law (2d Ed.), 794; Meagher v. Driscoll and Thirkfield v. Association, *supra*. Where such an action is maintainable, the injury to the natural feelings of the plaintiff may be taken into consideration in estimating the damages which he has sustained. Cooley, Torts, 240; Meagher v. Driscoll and Improvement Co. v. Jenkins, *supra*. Our own code provides that "in every tort there may be aggravating circumstances, either in the act or the intention, and in that event the jury may give additional damages, either to deter the wrongdoer from repeating the trespass, or as compensation for the wounded feelings of the plaintiffs." Civ. Code, sec. 3906. According to the allegation of the petition, this was clearly a tort in which there were aggravating circumstances. It was, as made by the petition, a case in which a jury could rightfully have awarded exemplary damages.

3. Irrespective of the plaintiffs' title to the

easement or their possession of the lot, the petition stated a good cause of action for damages for the removal of the gravestones. If a gravestone or monument, which has been erected upon a cemetery lot, is defaced or removed during the lifetime of the person who erected it, he may, at common law, recover damages from the one who inflicted the injury; but, if the injury is inflicted after the death, the heirs at law of the person to whose memory the gravestone or monument was erected are entitled to maintain the action. Day v. Beddingfield, Nov. 104; Spooner v. Brewster, 3 Bing. 136; Sabin v. Harkness, 4 N. H. 415; *In re* Brick Presbyterian Church, 3 Edw. Ch. 155; Mitchell v. Thorne, 134 N. Y. 536; Pierce v. Proprietors, 10 R. I. 227. If these gravestones were erected by Jacob Jacobus to mark and designate the graves of his children, then, if they had been injured or removed during his lifetime, he would have had a right of action against whoever inflicted the injury. While it is not distinctly averred that he did erect them, we think it is a fair presumption that he did, from the fact that he was the father of these infant children, purchased the lot, and had their bodies interred therein. After his death the right to sue for a trespass committed by defacing or removing the gravestones was in the heirs at law of the persons to whose memory the stones were erected; that is, the heirs at law of the children whose remains were interred in the graves. Whether the plaintiffs, or either of them, were in life at the time that either of these children died, does not appear from the petition; but, even if they were not, the father and mother became heirs at law of the deceased children, and at the time the stones were removed by the defendant, the plaintiffs were the heirs at law of both the father and the mother. So the right of action belonging to the heirs at law of these children, for the trespass committed by the removal of the gravestones, was in the plaintiffs at the time this injury was inflicted. This is clear when we consider that a monument or gravestone which designated the grave of a particular person was considered by the common law in the nature of a family heirloom; and for this reason the common law, after the death of the person who erected it, gave to the heirs at law of the person in whose memory the stone was set up the right to maintain an action against any one who injured or removed it.

NOTE.—*Recent Cases on Cemeteries, Lot Owners and Disinterments.*—A purchaser of a cemetery lot from a private corporation is not bound by an ordinance enacted after the transfer of the cemetery to a city prohibiting any grave from being dug except by permission of the city sexton. Ritchey v. City Corporate of Canton, 46 Ill. App. 185. A deed from a cemetery association to a lot in the cemetery, though absolute in form, conveys no title to the soil, but only a right of burial; and therefore a statute directing a removal of the bodies, without providing for compensation to the lot owners, is constitutional. Went v. Methodist Protestant Church of Williamsburgh, 30 N. Y. S. 157, 80 Hun, 266. Four brothers erected in the center of a cemetery lot, which they had jointly purchased, a monument, with its four sides facing the corners of the lot. On each side of the monument was inscribed the Christian name of one of the brothers, the space opposite the name being set apart as a burial place for his family. Their father and mother were buried at opposite corners of the monument. Held, that the whole lot was a family lot, and therefore, one brother could not sell his interest in the lot to a stranger, so as to authorize him to bury therein, without the consent of the other brothers, a person not belonging to the family. Lewis v. Walker, 165 Pa. St. 30, 30 Atl. Rep. 500. A widow will be enjoined from removing the remains of her deceased husband, where the only reason for the removal is that his daughter, who owns the burial lot, refuses to allow her to erect a monument thereon, where, in his lifetime, deceased expressed the desire to be buried in the lot. Thompson v. Deeds (Iowa), 61 N. W. Rep. 842. The tomb owner is without right to cause the removal of the remains of the dead transferred from the places of sepulture first selected by the surviving relatives, and deposited by him in the tomb, under his assurance, accepted by such relatives, and on the faith of which they permitted the transfer, that the remains should rest forever in the tomb. Choppin v. Labranche, 48 La. Ann. 1217, 20 South. Rep. 681. The charter of a cemetery association provided that land bought by it for cemetery purposes should be held by it in trust for purposes of interment forever, and that, from the funds obtained from sale of lots, the association should first pay the purchase price of the land, and then appropriate a sufficient sum to keep the grounds in repair and good order. Held, that after the association had paid for its land, and had appropriated for its repair and care a sum not alleged to be inadequate, it might distribute the remainder of its funds among its members. Bourland v. Springdale Cemetery Assn. (Ill. Sup.), 158 Ill. 458, 42 N. E. Rep. 86. It is not a breach of duty for a cemetery association to fail to keep in good order lots which it has sold to individuals. Bourland v. Springdale Cemetery Assn., 158 Ill. 458, 42 N. E. Rep. 86. A lot owner in a cemetery association may maintain a bill in equity against the corporation and its directors and officers for failure to keep the walks, drives and approaches in proper repair. Houston Cemetery Co. v. Drew (Tex. Civ. App.), 36 S. W. Rep. 802. Where, in trespass for entering a private burying ground and removing the bodies and monuments, defendants show that they were the owners of and in possession of the premises at and prior to the time of the trespass, and that the bodies and monuments were removed in good faith, and with care a decency, a nonsuit is proper. Bonham v. Loeb (Ala.), 18 South. Rep. 300. A complaint in trespass for removing the body of plaintiff's child from a burial place, describing the premises as a burial lot in a graveyard near B, in a certain county, which graveyard is included in the land occupied by a certain company, and which was dedicated by defendant as a burying ground, is good, as against a demurrer that the lot trespassed on is not described with sufficient accuracy. Bessemer Land & Improvement Co. v. Jenkins (Ala.), 18 South. Rep. 565. In an action for removing the body of plaintiff's child from its burying place, evidence of whom the coffin was bought, the cost thereof, and the amount of the funeral expenses is immaterial, it not being pretended that defendant knew anything about the funeral or burial, and the real issue being the rightful possession by plaintiff of the soil where the body was buried. Bessemer Land & Improvement Co. v.

Jenkins (Ala.), 18 South. Rep. 565. In an action for unlawful removal of the body of plaintiff's child from its burying place, injury to the feelings is an element of damages. Bessemer Land & Improvement Co. v. Jenkins (Ala.), 18 South. Rep. 565. That plaintiff erected a head board at the grave of his child, put turf around it, planted trees at the head and foot thereof, does not of itself show rightful possession of the soil and consequent right to sue for removal of the body. Bessemer Land & Improvement Co. v. Jenkins (Ala.), 18 South. Rep. 565. It is error to charge, in an action for the removal of the body of plaintiff's child from one cemetery to another, that, if plaintiff had actual possession of the soil where the body was buried, he was entitled to recover, where, though defendant removed the body without the knowledge or consent of plaintiff, and without notice to him to remove it, there was evidence that plaintiff knew or had notice that defendant had discontinued the old cemetery, and parties were requested to remove their dead to the new cemetery provided by defendant in lieu of the old. Bessemer Land & Improvement Co. v. Jenkins (Ala.), 18 South. Rep. 565. On suit against a cemetery association for disinterring the body of plaintiff's child from one of its lots, it appeared that the efendant sold the lot to plaintiff for full value, executing to him a deed; that defendant had previously sold the same lot to another person, but had executed no deed of it; that the first purchaser, discovering the interment shortly after it had been made, requested, and defendant promised, to have the body removed; that, more than a year afterwards, the defendant disinterred the child, reinterring it in an adjoining lot; that defendant never notified plaintiff that the removal would have to be made. Held, that punitive damages were properly allowed on the ground that the defendant, in thus recklessly disregarding plaintiff's right, committed a willful trespass. Thirkfield v. Mountain View Cemetery Assn. (Utah), 41 Pac. Rep. 564. When lots are sold for burial purposes, the purchasers acquire the right to visit same, and to improve and care for them, either in person or by agent, subject to proper regulations as to behavior while there. Graves v. City of Bloomington (Ill. App.), 67 Ill. App. 493. The grave of plaintiff's husband was in the so called "public ground," where defendant only mowed and cleaned up the whole ground once or twice a season, and it was not paid to give special care to the grave. There was no evidence that poison ivy had been growing there for any substantial time prior to plaintiff's injury thereby, or elsewhere in that part of the cemetery, or that defendant had notice of its presence. Held, that the evidence did not support a finding of the absence of reasonable care, for which alone defendant would be liable. George v. Cypress Hills Cemetery (N. Y. Sup.), 52 N. Y. S. 1097.

JETSAM AND FLOTSAM.

SCORCHING BUT JUST.

"The government of the United States is the most cruel and rapacious creditor and the most dishonest debtor in this country. If a man has a claim against the government which needs the kindness of congress, he had better destroy all evidence of the debt so that future generations may not be distressed and made bankrupt in an effort to collect the claim."

These are the words of the president of the American Bar Association, as reported by the daily press. They are undoubtedly true. The fact stated is what "Case and Comment," in August, 1898, called "a serious stain on the honor of the United States government." That stain is a shameful one. In this one particular of its treatment of private claims against it our government must be deliberately declared to be one of the most dishonorable governments among men. Every lover of justice, every enlightened lover of his country, who is proud of its greatness, proud of its justice as administered by the courts, must suffer humiliation at the dishonor of his government in respect to those claims against it for which application must be made to congress. The utter unfitness of congress, on account of its bulk and other reasons, to dispose of these claims properly, is beyond question. The only adequate remedy is a general law to provide for something equivalent to a judicial investigation of all private claims. It is time that the moral sense of the nation was as much aroused on this subject as on that of French injustice. For the United States to stand before the world as a nation that will not do justice even to its own citizens when they have meritorious claims against it is a disgrace that should make us smart. Some member of congress, with the requisite ability to carry the measure through, can do his country a great service in securing legislation whereby the government shall promptly and honestly dispose of all just claims against it.—*Case and Comment.*

AN INJUNCTION AGAINST VISITING A WOMAN.

An injunction against visiting another man's wife or writing to her or in any way communicating with her was recently sustained by the Texas Court of Criminal Appeals. The decision was made in a *habeas corpus* proceeding for release from imprisonment for contempt of court by disobeying the injunction. The prisoner boldly attacked the injunction as an infringement upon his constitutional right to freedom of speech and the pursuit of happiness, but the court did not so consider it. The chief contention was that a purely personal right could not be protected by equity; but the court, quoting at some length from the note in 37 L. R. A. 783, held that such contention is not supported either by reason or by the actual practice of equity courts. While the general rules of equity were deemed sufficient to support the injunction, the court called attention to Tex. Rev. Stat. art. 2989, authorizing an injunction whenever relief to which a person is entitled "requires the restraining of some act prejudicial to the applicant." In this case the plaintiff sued for damages on account of a partial alienation of his wife's affections, and sought an injunction to prevent a further alienation.

But the rights of the woman in the case remain to be considered. She is not mere property of her husband which he can have sequestered or put into the hands of a receiver. She is herself a person with rights and "troubles of her own." Whatever may be the husband's remedies as against third persons, has he any right to hedge up her freedom? The English case of Reg. v. Jackson (1891), 1 Q. B. 671, denied the right of a husband to confine his wife in his own house in order to give him an opportunity to regain her affections and prevent her from coming under the influence of her relatives who might alienate her from him. But a wife's freedom of action is in some degree limited by injunctions to keep other people from communicating with her. Precedents showing that the courts may award injunctions against courting a ward of court do not apply to a married woman of full age. If, at her husband's suit, another man may be restrained from visiting her, then it would seem

that at her suit her husband might be restrained from visiting another woman, and that woman restrained from receiving his visits. We should go toward government by injunction at a rapid rate if courts could interfere with the liberty of persons of full age and sound mind by regulating their social relations and restraining them from having communication with each other in order to keep them from improper influences.—*Case and Comment.*

THE INADMISSIBILITY OF PAROL EVIDENCE WHICH MODIFIES A WRITTEN INSTRUMENT.

In Washington Savings Bank v. Ferguson, the Appellate Division of the New York Supreme Court (first department), on July 19, 1899, took occasion to consider a new phase of the parol evidence rule. The action was against the last indorser of two promissory notes of the Arkell Publishing Company. The defendant was the vice president of plaintiff, and set up the claim that the latter had agreed to look to certain collaterals for payment, then to the Arkell Company and only to the defendant for an unpaid balance after exhausting its remedies against the company. The court held, however, that the defense was inherently bad, on the ground that defendant was distinctly seeking to vary or qualify his written obligation of indorsement, parol evidence tending in this direction being as clearly inadmissible in the case of a contract of indorsement, accommodation or otherwise, as in the case of any other written agreement. The defendant sought to bring his defense within that class of cases where it is held that as the delivery and consideration of a note are always open to impeachment, the effect of the delivery and the extent of its operation may be limited by the conditions on which the delivery was made, basing his contention upon the decision in Benton v. Martin, 52 N. Y. 570, and the line of cases sustaining the principle therein enumerated. Higgins v. Ridgway, 153 N. Y. 130; Bookstaver v. Jayne, 60 N. Y. 146; Garfield National Bank v. Colwell, 57 Hun, 169. These decisions are, however, scarcely applicable, though the last encroaches on the border line. As the court observes, "the real question in all of them was as to the consideration. In none of them was it held that parol evidence could be given of a condition affecting the tenor of the contract obligation. Conditions relating to the delivery of the note may be shown, but not conditions affecting the character of the delivered obligation. The one goes to the existence and vitality of the contract; the other, conceding its existence and vitality, would annex a parol condition thereto, varying its contract essence. The defendant admits that the accommodation indorsement imparted a qualified liability. This case is clearly reduced to an attempt by parol to vary and minimize the contract obligation, and it must fail."

In the foregoing the court has certainly adopted a safe and conservative rule, which can well be followed as a precedent. The question was rather a close one, though had the admissibility of the evidence in question been granted, it may be imagined that there would have been a most dangerous weakening of a well established principle. Parol evidence if of too dangerous a quality and too hazardous in its nature to be permitted to have much effect when a writing is concerned, except to prove, as the preceding cases have demonstrated lack of consideration, or, in other words, to show that no real agreement ever existed.—*The American Lawyer.*

DOES THIS DECISION DECIDE ANYTHING?

The recent decision of the supreme court of this State, in Burton v. Gagnon, seems to be a piece of judicial legardermain. It is difficult to ascertain from a reading of the case whether the supreme court means to be understood as deciding anything beyond the affirmance of the decree. The alleged opinion of the court, written by Justice Craig, proceeds to construe a certain will and to determine the effect of a certain decree in a partition suit. The opinion of Justice Craig at great length discusses the provisions of the will and holds it to be invalid. Three justices, however, dissent generally from the alleged opinion, and another judge while concurring in the judgment of affirmance dissents from the construction placed on the will, four justices, therefore, hold the will to be valid, and three hold it to be invalid, and yet the opinion of the court as prepared by Justice Craig purports to be against the validity of the will.

It is true the opinion further holds that the effect of a certain decree in partition was to confirm the title of appellees (contrary to the terms of the will), and was sufficient ground for affirming the decree of the court below. This would be very well if the opinion proceeded altogether on that ground; but the real point on which the case was affirmed is given but scant notice, while there is a great parade of erudition and authority in support of a position which is supposed to be the opinion of the court, but on looking at the end of the decision we find that the position is repudiated by a majority of the court. Opinions of this character are likely to mislead the profession. It would be well for the opinion of the court to be confined to the real matter decided by a majority of the court.

The opinion of Justice Craig is a most startling one, and it is not surprising that it should have caused an upheaval in the court. The case involved the construction of the will of S. Lester Burton, deceased. Burton, died, leaving a widow and two children, and certain real estate. He provided by his will that his real estate should be distributed according to the laws of descent of the State of Illinois, with this exception, that should his children not survive his wife, and should they die intestate and without lawful issue, then his widow to have a life estate and the remainder to go to the heirs of the father of the deceased. The real estate devised was ancestral property, having been inherited by deceased from his father, and it was the intention of the testator, clearly expressed by his will, that in case his children should survive their mother they were to take the real estate in fee, but in case they predeceased their mother, and died leaving no issue and no will, then the property was to revert to the heirs of his father. This was a plain case of a defeasible fee in the children of deceased, with an executory devise over in favor of the collateral heirs in the event aforesaid, and such provisions in wills have been repeatedly sustained by the supreme court in prior cases. Yet the supreme court hold in this case that the testator attempted to devise the fee to two classes; that the two devises were repugnant and therefore the first must stand, and the last devise fail, and thus the intention of the testator be totally defeated.

This part of the opinion is not, of course, of any authority as a precedent, since it was concurred in by a minority of the court only, but it is difficult to understand why the opinion of a minority of the justices should be set forth at length, with the arguments and authorities in support of it, and appear to be the opin-

ion of the court, while a majority of the court are put in the attitude of dissenting judges.—*Chicago Law Journal.*

VIRGINIA STATE BAR ASSOCIATION.

The Virginia State Bar Association convened in its eleventh annual meeting at the Hot Springs of Virginia, August 1st, 2d and 3d. The meeting was one of the most interesting the association has ever held, and the entertainment afforded at this famous Virginia resort was unsurpassed. The president's address was delivered by Col. John Goode, of Bedford City, Va., a former member of congress, and a gentleman who is well known throughout the country. His paper was entitled "A Recurrence to Fundamental Principles," and dealt with this subject in a masterly manner. Another paper was read by Mr. James P. Harrison, of Danville, Va., entitled "Suggested Changes in our Judicial System." Mr. Harrison made a fine impression, and it is hoped that the legislature will take action along the lines suggested by him.

Another paper was read by Mr. Marshall M'Cormick, of Berryville, Va., on "Professional Ethics," a subject which elicited a great deal of discussion. Certain amendments to the code affecting the power of courts to disbar or suspend attorneys for "any malpractice or any corrupt unprofessional conduct" were suggested by Mr. Eugene C. Massie, of Richmond, Va. A bill to carry into effect the suggestions of Mr. Massie was formulated by a committee of which Prof. Wm. M. Lile of the University of Virginia was chairman; and this bill was unanimously recommended to the legislature of Virginia by the association, and referred to the committee on legislation and law reform, for presentation to that body.

A resolution concerning the celebration of "John Marshall Day," in accordance with the movement recently inaugurated by the Chicago Bar Association upon the motion of Hon. Adolph Moses, of the Chicago Bar, to celebrate in an appropriate manner the coming centennial anniversary of the elevation of John Marshall to the position of Chief Justice of the Supreme Court of the United States, was introduced by Mr. James P. Harrison, of Danville, Va., but was subsequently withdrawn in favor of a similar motion by Mr. B. B. Munford, of Richmond, Va. A committee was appointed by the president to communicate with the American Bar Association on this subject, consisting of B. B. Munford, Richmond, L. L. Lewis, Richmond, John A. Coke, Richmond, Jackson Guy, Richmond, and James P. Harrison, of Danville.

A resolution was offered by Mr. Eugene C. Massie, of Richmond, Va., for the appointment of a committee to investigate the "Torrens System" for the registration and transfer of real estate, to report to the association at its next annual meeting, with the sketch of a bill for the adoption of said system by the legislature of Virginia, if the same shall be deemed advisable by the committee. The president appointed Eugene C. Massie, of Richmond, Prof. Charles A. Graves, University of Virginia, and W. W. Old, of Norfolk, upon this committee.

The annual address was delivered by Judge Alexander Pope Humphrey, the senior member of the firm of Humphrey & Davie, of Louisville, Kentucky. His subject was "The Impeachment of Samuel Chase," and his paper was pronounced one of the best that has ever been delivered before the association.

The following officers were unanimously elected for the ensuing year: For president, William J. Leake, of Richmond; secretary and treasurer, Eugene C. Massie, Richmond; executive committee, B. B. Munford, Richmond, and W. P. McRae, Petersburg; delegates to the American Bar Association, H. St. George Tucker, Lexington; J. Alston Cabell, Richmond; and R. M. Hughes, Norfolk. One hundred and twenty members were present at this meeting, and it was voted one of the most pleasant the association has ever held.

BOOKS RECEIVED.

Questions and Answers for Bar-Examination Review. By Charles S. Haight, M. A., LL. B. of the New York Bar, and Arthur M. Marsh, B. A., LL. B. of the Connecticut Bar. New York, Baker, Voorhis & Company, 1899. Canvas, pp. xlvi. 506, Price $3.75.

The Clerks' and Conveyancers' Assistant. A Collection of Forms of Conveyancing, Contracts, and Legal Proceedings, for the Use of the Legal Profession, Business Men, and Public Officers in the United States, with Copious Instructions, Explanations, and Authorities. By Benj. V. Abbott and Austin Abbott. Second Edition, Revised and Enlarged. By Clarence F. Birdseye, of the New York Bar. New York: Baker, Voorhis and Company, 1899. Law Sheep, pp. 1091. Price, $6.30.

BOOK REVIEWS.

QUESTIONS AND ANSWERS FOR BAR EXAMINATION REVIEW,

By Charles S. Haight, M. A. L. L. B., of the New York Bar, and Arthur M. Marsh, B. A. L. L. B., of the Connecticut Bar. The different subjects of the law seem in this book to have been treated in a most logical way for review that they would originally be studied by the student. The whole ground seems to have been covered, making this book as valuable for use in one State as another. It is adapted for use, no matter at what bar the student may be seeking admission. The authors say, "this book is the only one of the kind which requires the application of legal principles to a statement of facts given in the question, thus meeting the requirements of students in view of the marked changes in this respect in the nature of the questions now asked by bar examiners." This book will also be found useful to law students in preparing for their law school examinations. Not only will this book be useful to students but also to practitioners whose libraries are limited, for speedy reference, being an encyclopedia of legal principles and leading cases. The authors say, "a student is no longer asked to define a partnership or a corporation, but is required to state the rights or the liabilities of the parties in a given case. This more exacting method of examination requires a more careful review than was formerly necessary when the questions had become almost stereotyped." This book does not follow the beaten track by suggesting questions asked by former examiners in any State. It is a legitimate, honest and thorough review of legal principles previously acquired and will be as valuable in one State as another, and when conflicts have been found between the dif-

ferent States, such conflicts have been noted and the opposing jurisdictions given. The book contains 550 pages, bound in law canvas. Published by Baker, Voorhis & Company, New York City.

CLERKS' AND CONVEYANCERS' ASSISTANT.

By Benjamin Vaughan Abbott and Austin Abbott. This is the second edition much enlarged by Clarence F. Birdseye of New York. This we think is the best book of forms we have ever examined—forms and manner of preparing legal papers upon every conceivable subject. If it contained nothing but its forms in Bankruptcy, Acknowledgments, Bonds, Conveyances, Deeds, Leases, Mortgages and Wills, they would be well worth the price of the book. Indeed, the usefulness and timeliness of the forms in bankruptcy would alone be worth the price of the book to any lawyer. The Abbott brothers, Benjamin and Austin, have been experts in the matter of preparing forms, and the present editor, Mr. Birdseye, has also added much to the usefulness of the book. For example, the subject of mortgages in the first edition covered 10 pages, while in the present edition this subject covers 170 pages, and now embraces railroad and debenture mortgages. The statutes of the different States have also in many cases been given in their proper places. The authors say that "the present work follows the original edition in giving forms that are not academic, but which are based upon actual papers arising in actual practice usually passed on by eminent counsel representing opposing interests." This book is made very useful by the completeness of its index enabling the lawyer to quickly find the forms upon any subject, not only the title subject, but also important covenants and other provisions of the papers themselves, and the fullest cross references. The book contains 1100 pages, bound in best law sheep. The type used rather smaller than in the ordinary law book, so that it contains an immense amount of matter. Published by Baker, Voorhis & Company, New York City.

AMERICAN STATE REPORTS, VOL. 65.

The cases published in this volume are well selected, and there are an unusual number of excellent annotations. Appended to the case of Reinhard v. Reinhard (Wis.), is an exhaustive note on the subject of cruelty as ground of divorce. In connection with the case of Pacific R. M. Co. v. Bear Valley I. Co. (Cal.), is a note on an interesting question of mechanic's lien, viz., when the lien may or must include property in addition to that upon which the work was performed or the materials furnished. The case of Board of Education v. Purse (Ga.), has a note on the subject of causes for which children may be excluded from the public schools. There is a note to Williams v. Hamilton (Iowa), on reformation of contracts. The case of Maddox v. Duncan (Mo.), has a note on the relation of agency existing between persons jointly liable. Greenlee v. Southern Railway Co. (N. Car.), has a note on the duty of railroads to furnish improved appliances. This sterling set of reports is ably edited by Mr. A. C. Freeman and published by Bancroft-Whitney Co., San Francisco.

HUMORS OF THE LAW.

A coroner in Nevada recently reasoned out a verdict more sensible than one half the verdicts usually rendered. It appeared that an Irishman, conceiving that a little powder thrown upon some green wood would facilitate its burning, directed a small stream from a keg upon the burning piece, but not possessing a hand sufficiently quick to cut this off, was blown into a million pieces. The following was the verdict, delivered with great gravity by the officer: "Can't be called suicide, bekase he didn't mean to kill himself; it wasn't 'visitation of God,' bekase he wasn't struck by lightning; he did not die for want of breath, for he hadn't nothing to breathe with; it's plain he didn't know what he was about, so I shall bring in—died for want of common sense."

Pungent, rather than polite, is a great deal of forensic humor—as in the "retort" of a celebrated advocate, John Clerk, who was afterwards known as Lord Eldin. He was limping down the High street of Edinburgh, and heard a young lady remark to her companion, "That is the famous John Clerk, the lame lawyer." He turned around, and said, with his "not unwonted coarseness," "You lie, ma'am! I am a lame man, but not a lame lawyer."

"The testimony is against you," said the police justice, "is clear and conclusive. You spend your time committing petty thefts."

"Yes, your honor," responded the prisoner, venturing to wink at the court; "I am an embodied protest against the existing condition of things. I am a round robbin, your honor."

But his honor was equal to the emergency.

"For the next 60 days, anyhow," he said, frowning at the prisoner; 'you won't be around robbin.' You'll be a jail bird. Call the next case!"

Judge A—"Well Uncle Zeb, where are you going?" The Benedict—"I wus jis going to de cote, suh, to see you, suh, and get a remorse from dat yallar limb dat I married the yarder day." Judge A—"Why, see here; that won't do. Didn't you promise me you would take her for better, or worse, and all that?" The Benedict—"Yas, suh; but den she am a sight wuss dan I took her fur."

It is told of the late Chief Justice Cockburn that, while he was in practice, he was counsel for the plaintiff in a certain case, and a Mr. B. was for the defendant. Cockburn called a witness and proceeded to examine him.

"I understand," he said, "that you called on the plaintiff. Is that so?"

"Yes," replied the witness.

"What did he say?"

Up rose Mr. B, objecting to the admission of the conversation in evidence. After considerable argument the court retired to consider the point. They were absent nearly half an hour. When they returned they announced that Mr. Cockburn might put his question.

"Well, what did he say?" asked the counsel.

"Please, sire, he was not at home," responded the witness solemnly.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published

n Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACCIDENT INSURANCE—Conditions of Policy.—A person whose occupation is that of a traveling salesman for a coal company is not within the exception in a clause of a policy of accident insurance which provides that there shall be no recovery in case the insured is injured while "walking or being on any railroad bridge or roadbed (railway employees excepted)," merely because the duties of his occupation render it necessary that he should go upon the roadbeds of railroads. The proper construction of such a clause is that the insurance is suspended during the time that the insured is in the position above stated.—YANCEY v. ÆTNA LIFE INS. CO., Ga., 33 S. E. Rep. 979.

2. ASSIGNMENT FOR BENEFIT OF CREDITORS—Rights of Creditors.—The right of a creditor of an assigned estate to demand that an account filed by the assignee shall be made to conform to the requirements of Rev. St. § 1701, before he is required to make special objections to any particular item therein, is absolute, and not discretionary with the court.—STATE v. JOHNSON, Wis., 79 N. W. Rep. 1081.

3. ASSUMPSIT — Action — Implied Promise by Purchaser of Mortgage.—The holder of a promissory note secured by mortgage may recover the contents of his note from the purchaser of the mortgaged property, who assumes the mortgage debt, and agrees with the maker of the mortgage note by writing, not under seal, to pay the same. In such case, where the transaction fairly imports such to have been the intention of the parties, an implied promise by the purchaser results from equitable considerations to pay the debt to the holder of it.—CUMBERLAND NAT. BANK v. ST. CLAIR, Me., 44 Atl. Rep. 123.

4. ATTACHMENT—Indemnity Bond to Sheriff.—The obligee in an indemnity bond conditioned to save him harmless from any damages cannot maintain an action thereon until he has, by the payment of the judgment against him, been damaged; payment may be made in the note of the obligee, if accepted as actual payment and satisfaction of the judgment.—GARDNER v. COOPER, Kan., 58 Pac. Rep. 230.

5. ATTACHMENT—Rights of Mortgagee.—Where property is attached, a mortgagee, claiming to be in possession of the goods at the time the levy is made, may move to discharge the attached property.—SYMNS GROCER CO. v. LEE, Kan., 58 Pac. Rep. 237.

6. ATTORNEY AND CLIENT—Unauthorized Appearance.—If an attorney at law, in violation of express instructions, causes his client to be made a party to pending litigation, the latter is not bound by any judgment therein rendered, but may repudiate the same, and, if he is the only person sought to be charged thereby, may, by appropriate and timely proceedings, have such judgment set aside; or, if there be others upon whom it is lawfully binding, he may have it annulled in so far as it relates to him.—LONGMAN v. BRADFORD, Ga., 33 S. E. Rep. 916.

7. BANKS—Certificate of Deposit.—A certificate of deposit issued by a bank, and payable to the order of the depositor "on return of this certificate properly indorsed," is not due until payment thereof is actually demanded.—HILLSINGER v. GEORGIA RAILROAD BANK, Ga., 33 S. E. Rep. 985.

8. BANKS — Voluntary Payment.—A payment by a bank to a husband of his deceased wife's deposit under a mistake of law cannot be recovered back.—STRAFFORD SAV. BANK v. CHURCH, N. H., 44 Atl. Rep. 105.

9. BANKRUPTCY—Discharge—Concealment of Property.—Where policies of insurance on the life of the bankrupt are payable to his wife as beneficiary, and there is no proof that the premiums paid by the bankrupt were so excessive in amount as to justify the inference of an intended fraud on his creditors, money realized by the surrender of such policies is the property of the wife; and the bankrupt's omission to disclose such fund to his trustee is not a fraudulent concealment of property of his estate, such as to forfeit his right to a discharge.—IN RE DEWS, U. S. D. C., D. (R. I.), 96 Fed. Rep. 181.

10. BANKRUPTCY—Discharge—Concealment of Property.—Creditors opposing the discharge of a bankrupt on the ground of his having concealed property from his trustee must assume the burden of proving such concealment; and it is not sufficient for them to show merely his former ownership of certain goods, and that he is not now able to account for the same, but there must be evidence of his present possession or control of such property.—IN RE IDZALL, U. S. D. C., S. D. (Iowa), 96 Fed. Rep. 314.

11. BANKRUPTCY—Examinations—Scope of Inquiry.—Where the bankrupt, more than a year before the enactment of the bankruptcy law, had made an assignment for the benefit of his creditors under a State law, it is not material or proper, in his examination in the bankruptcy proceedings, to inquire into the circumstances under which the assignment was made, nor to require the assignee to produce the books and papers turned over to him at the time, unless a foundation is first laid for the belief that property of the bankrupt was withheld by him at the time of such assignment, and was still held as his at the time of the enactment of the bankruptcy law.—IN RE HAYDEN, U. S. D. C., S. D. (Fla.), 96 Fed. Rep. 199.

12. BANKRUPTCY—Jurisdiction of Exempt Property—Waiver.—As property which is exempt by the law of the bankrupt's State never comes within the jurisdiction of the court of bankruptcy as assets of the estate, nor does the title thereto vest in the trustee, it being the duty of the latter merely to set apart to the bankrupt the exemption to which he is entitled, the court of bankruptcy will not retain any control over such property for the purpose of enforcing the rights of a creditor holding a note in which the bankrupt has waived his rights of homestead and exemption; but such creditor will be left to assert his rights in a court of competent jurisdiction.—IN RE HILL, U. S. D. C., N. D. (Ga.), 96 Fed. Rep. 183.

13. BANKRUPTCY — Liens — Unrecorded Mortgage.—Where, by the law of the State, an unrecorded mortgage is good against the mortgagor and against all others except intervening incumbrancers or purchasers, a mortgage given by a debtor to one of his creditors, more than four months before the filing of the debtor's voluntary petition in bankruptcy, is a valid lien, as against the trustee in bankruptcy and the general creditors whom he represents, though it was not recorded until the day on which such petition was filed, and though in the meantime the mortgagor remained in posesssion, with power to sell.—IN RE WRIGHT, U. S. D. C., N. D. (Ga.), 96 Fed. Rep. 187.

14. BANKRUPTCY—Petitioning Creditors—Withdrawal.—A creditor who joins with others in filing a petition

in involuntary bankruptcy against their debtor, the act of bankruptcy alleged being a preferential transfer of the debtor's whole property, but afterwards obtains a settlement of his debt, and transfers his claim, will not be allowed to withdraw from the proceeding when his withdrawal would reduce the amount of debts represented on the petition below the jurisdictional minimum, and so require the dismissal of the proceeding.—IN RE BEDINGFIELD, U. S. D. C., N. D. (Ga.), 96 Fed. Rep. 190.

15. BANKRUPTCY—Priority of Claims—Workmen and Servants.—The general manager of a mercantile corporation, who has supreme authority in managing and directing its daily business affairs, and who is also a stockholder and director, and is allowed a salary of $100 per month by the board of directors for his services as manager, is not a "workman" nor a "servant" of the corporation, within the meaning of Bankruptcy Act 1898, § 64b, according priority of payment out of bankrupt estates to "wages due to workmen, clerks or servants."—IN RE GRUBBS-WILEY GROCERY CO., U. S. D. C., W. D. (Mo.), 96 Fed. Rep. 183.

16. BANKRUPTCY—Refusal to Turn Over Assets.—A bankrupt who admits that he had in his possession $2,500 in cash, three or four weeks before proceedings in bankruptcy were begun against him, and who refuses, when an order is made upon him, to turn it over to the trustee, or to give any account of what disposition he has made of it, should be committed to prison until he disgorges the same.—IN RE ROSSER, U. S. D. C., E. D. (Mo.), 96 Fed. Rep. 308.

17. BANKRUPTCY—Title of Trustee—Conditional Sales.—Where a State statute provides that conditional sales of personal property, unless by writing, acknowledged and recorded, shall be deemed absolute sales, except as between the parties or their personal representatives, property held by a bankrupt purchaser under a bill of sale not acknowledged or recorded will vest in his trustee for the benefit of the estate, and cannot be reclaimed from him by the vendor, although, as against the bankrupt himself, such vendor might have claimed the property for non-payment of the price.—IN RE LEGG, U. S. D. C., D. (Conn.), 96 Fed. Rep. 326.

18. BANKRUPTCY—Waiver of Exemptions.—A court of bankruptcy, by virtue of the powers conferred upon it by Bankruptcy Act 1898, ch. 2, § 2, and particularly the grant of authority to "determine all claims of bankrupts to their exemptions," has jurisdiction to protect and enforce, against property set apart to the bankrupt as exempt under the laws of the State, the rights of creditors who hold his notes or other like obligations containing a written waiver of the exemption, but who have not reduced their claims to judgment, nor otherwise established a specific lien on such property.—IN RE WOODRUFF, U. S. D. C., S. D. (Ga.), 96 Fed. Rep. 317.

19. BENEFICIAL SOCIETIES—Forfeitures.—Though the rules of a beneficial society provide that a member failing to pay an assessment within 20 days of notice thereof shall stand suspended, and may be reinstated within 3 months by signing a health certificate, yet forfeiture is waived, notwithstanding a member dies 40 days after an assessment should be paid, with it still unpaid, where several assessments were not paid by him within the specified time, but the money was afterwards received, without suspension being announced, or action taken thereon, and the officers, by a long-continued course of conduct, caused him to believe that a delay in payment would not affect his standing.—WALLACE V. FRATERNAL MYSTIC CIRCLE, Mich., 80 N. W. Rep. 6.

20. BILLS AND NOTES — Consideration.—Where there is a dispute between the maker and payee of a promissory note touching its validity, depending upon an honest difference of views between them, either on a doubtful question of law or fact, and they enter into a compromise or settlement of their differences by an agreement to extend time on the claim and to have the same fall due by installments, and when, in accordance with this agreement, new notes are given and accepted by the parties, maturing at different times, there is a sufficient consideration in law to support the validity of such notes, and the maker thereof cannot defend a suit upon them by showing that his contention in reference to the original debt was correct.—TYSON V. WOODRUFF, Ga., 33 S. E. Rep. 961.

21. BILLS AND NOTES—Discount—Payment to Payee.—The fact that there was, between the payee of a negotiable promissory note and the bank at which the same was discounted, an agreement that the maker should be kept in ignorance that the note had been discounted, did not, without more, constitute a fraud upon the maker, or warrant him in paying the note to the original payee without requiring him to produce and surrender it.—TUCK V. NAT. BANK OF ATHENS, Ga., 33 S. E. Rep. 983.

22. BILLS AND NOTES — Payment — Evidence.—The *prima facie* case of non-payment made out by plaintiff introducing a note, proving the signature of deceased thereto, due presentation of the claim to defendant's executor, and its rejection, is not overcome by defendant showing that, after its date, deceased executed to plaintiff a note for about the amount of the note sued on and another note which deceased had given plaintiff.—GRIFFITHS V. LEWIN, Cal., 58 Pac. Rep. 205.

23. BILLS AND NOTES — Payment to Drawer Without Production of Draft.—A payee of a draft, who, when it was drawn and accepted, credited the amount thereof on a debt owing by the drawer to him, is a *bona fide* holder for value, and can maintain an action thereon against the drawee, who, subsequent to the acceptance, paid the amount thereof to the drawer, without requiring the latter to produce the draft.—TEXARKANA NAT. BANK V. STILLWELL, Mich., 79 N. W. Rep. 1093.

24. BUILDING ASSOCIATIONS—Liability of Auditors.—Members of a building association, not officers, appointed by the directors on a committee from time to time, to which are referred quarterly statements of the secretary, are not liable for his embezzlements, not discovered by them, it not appearing that they did not exercise skill and diligence, no item appearing on the face of the books presented to them that was not accounted for or included in the statements, and the shortages being covered up and concealed by the secretary.—ALPENA LOAN & BLDG. ASSN. V. DENISON, Mich., 79 N. W. Rep. 1098.

25. CHATTEL MORTGAGE—Assignment for Creditors.—A chattel mortgage given by a debtor to several creditors, who, by the terms of the instrument, are to prorate in the proceeds of the mortgaged property, is the legal equivalent of a separate mortgage to each of such creditors.—SKINNER V. FIRST NAT. BANK OF PAWNEE CITY, Neb., 80 N. W. Rep. 42.

26. CHATTEL MORTGAGE — Retaining Possession—Fraud.—Whether the mortgage is fraudulent depends on the intention of the parties, and is not a question of law for the court, but a question of fact for the jury.—HEIDMAN-BENOIST SADDLERY CO. V. SCHOTT, Neb., 80 N. W. Rep. 47.

27. CONSTITUTIONAL LAW—Examination of Bankrupt—Criminating Evidence.—Under the fifth amendment to the constitution of the United States which declares that "no person shall be compelled in any criminal case to be a witness against himself," where a person is under examination before a referee in bankruptcy he is not obliged to answer questions when he states that his answers might tend to criminate him; and this is true notwithstanding section 7 of the bankrupt act provides that "no testimony given by him shall be offered in evidence against him in any criminal proceeding."—IN RE ROSSER, U. S. D. C., E. D. (Mo.), 96 Fed. Rep. 305.

28. CONSTITUTIONAL LAW—Laws Affecting Remedy.—2 Ballinger's Ann. Codes & St. § 5299, which provides that when real estate is sold on execution, and is subject to redemption, the judgment debtor shall be entitled to possession and to the rents, issues, and profits

during the period allowed by law for redemption, is not unconstitutional as to debts incurred prior to its passage, as violating the obligation of contracts, where, prior to its passage, under the then statute, a purchaser at execution sale was entitled to the rents and profits during the year of redemption.—WILSON v. WOLD, Wash., 58 Pac. Rep. 222.

29. CONTRACT—Right to Enforce — Fraudulent Claim of Agency.—Plaintiffs, as brokers, entered into a contract for the purchase from defendant of certain bonds, claiming to act for an undisclosed principal, and stipulating that they should in no manner be held liable on the contract, which, as they had reason to believe, was made by defendant under a misapprehension as to the value of the bonds. In fact, they were acting for themselves, and there was no other principal. Held, that they could not maintain an action on the contract,—not as agents for an undisclosed principal, because no such principal existed, nor as principals, because, by their fraudulent misrepresentations, they had secured immunity from liability on the contract as such, and estopped themselves from claiming rights which were correlative with such liability.—PAINE v. LOEB, U. S. C. C. of App., Second Circuit, 96 Fed. Rep. 164.

30. CONTRACT—Rescission — Fraudulent Representations.—A contract may be rescinded for fraudulent misrepresentations, though the means of obtaining information were fully open to the party deceived, when from the circumstances he was induced to rely upon the other party's representations.—ENGEMAN v. TAYLOR, W. Va., 33 S. E. Rep. 922.

31. CORPORATIONS — De Facto Officers.—Trustees of a corporation, who are elected to fill vacancies on the board by all the available members thereof, who are less than a majority thereof, and who secure peaceable possession of office thereby, are *de facto* officers.—BAGGOT v. TURNER, Wash., 58 Pac. Rep. 212.

32. CORPORATIONS—Informal Execution of Mortgage —Estoppel.—A corporation may be estopped to question the validity of a mortgage duly executed by its officers over its corporate seal, though not authorized by any action of its directors, where they individually knew and approved of its execution, but, by reason of the absence of some of their number, a meeting could not be held to take formal action thereon.—NEVADA NICKEL SYNDICATE v. NATIONAL NICKEL CO., U. S. C. C., D. (Nev.), 96 Fed. Rep. 133.

33. CORPORATIONS — Insolvent Corporations—Creditors' Suits.—After a court of equity has assumed charge of the affairs of a corporation on a creditors' bill alleging insolvency, and at the instance of the complainant and with the consent of the defendant has appointed a receiver, issued an injunction restraining creditors from pursuing other remedies, and required them to prove their claims therein, which many of them have done, such creditors have an interest in the suit, and the parties to the record no longer have the right, by agreement between themselves, to terminate it. Under such circumstances, an application to dismiss is addressed to the discretion of the court, which, in acting upon it, will take into consideration the interest of those who, by its own orders, have been brought into the litigation.—JOHNSON v. MILLER, U. S. C. C. of App., Fourth Circuit, 96 Fed. Rep. 271.

34. CORPORATIONS—Subscriptions to Stock — Parties to Contract.—When a corporation is organized, and a subscription to its stock previously made is accepted, such subscription becomes a contract binding according to its terms, the parties to which are the corporation on one side and the subscriber on the other.—MCNAUGHT v. FISHER, U. S. C. C. of App., Second Circuit, 96 Fed. Rep. 168.

35. CORPORATIONS—Unpaid Subscriptions — Enforcement.—In a suit brought by a creditor of a corporation against persons alleged to be stockholders in such corporation to recover unpaid subscriptions for stock, such persons, if shown to be subscribers for stock, will not be allowed in such a suit to call in question the corporate existence of the alleged corporation, nor to show any irregularities in its creation or organization, provided the contract sued on is within the powers apparently possessed by the alleged corporation.—TORRAS v. RAEBURN, Ga., 33 S. E. Rep. 989.

36. CRIMINAL LAW — Conspiracy—Obvious Fraud.—A conspiracy to defraud by false pretenses is none the less an offense because not calculated to deceive a person of ordinary intelligence.—PEOPLE v. GILMAN, Mich., 80 N. W. Rep. 4.

37. CRIMINAL LAW—Homicide—Self-Defense.—Where, from one portion of the charge, the jury might get an impression that defendant could not act on his own belief of danger, and that he could not escape it in any other way than to do as he did, if the jury believed he was mistaken, and could have escaped, there is reversible error, though in another portion they were told he might judge of the circumstances as they appeared to him, they being evidently confused by the charge, as they, after retiring, asked for further instructions as to what would be a justification for the shooting, whereupon they were charged in the same language as in the original charge.—PEOPLE v. BENNETT, Mich., 80 N. W. Rep. 9.

38. CRIMINAL LAW — Simultaneous and Cumulative Sentences.—In the absence of any statute, if it is not stated in either of two sentences imposed at the same time that one of them shall take effect at the expiration of the other, the two periods of time named in them will run concurrently, and the two punishments be executed simultaneously.—IN RE BRETON, Me., 44 Atl. Rep. 125.

39. CRIMINAL TRIAL — Murder — Witnesses.—Under Pub. St. ch. 169, § 22, which provides that a party calling a witness cannot impeach his testimony by showing his bad character, but that he can show that such witness has at other times made inconsistent statements, after laying the proper foundation, the State may show, in a criminal prosecution, that a witness called by it testified differently before the grand jury which found the indictment.—COMMONWEALTH v. CHANCE, Mass., 54 N. E. Rep. 551.

40. ESTOPPEL.—The fact alone that a partnership owning stock in a corporation allows it to stand on the books in the name of one of the partners, in order to qualify him to act as a director, does not create an estoppel against the firm or its creditors which will render the stock subject to the individual debts of such partner, although he may have represented himself as the owner, and secured credit thereby, where it is not shown that his creditors knew that the stock stood in his name, or were influenced by the fact.—NEW YORK COMMERCIAL CO. v. FRANCIS, U. S. C. C., D. (Conn.), 96 Fed. Rep. 266.

41. ESTOPPEL BY DECLARATIONS.—Where there is a dispute between a company and an individual as to which of the two owns a tract of land, and the agent of the company has falsely and fraudulently represented to such other claimant that his company has title to the property, and "back deeds" to the same, and, acting upon this, such other claimant purchases from the company an interest in the land, and receives from the company a deed thereto, which interest he, for value, transfers by deed to an innocent purchaser, who likewise acts upon the representations made by said agent, the agent is afterwards estopped from setting up title in his own name against such purchaser. This is true though such agent may afterwards acquire a perfect legal title to the property, not derived from either of the claimants above mentioned.—CROSBY v. MEEKS, Ga., 33 S. E. Rep. 913.

42. FEDERAL COURTS — Jurisdiction — Constitutional Question.—The exercise by a city of its general power given it by the legislature of controlling the streets and of making and enforcing contracts with reference to their occupancy by individuals or corporations, is action by the State, within the meaning of the provis-

ion of the first section of the fourteenth constitutional amendment, which prohibits any State from depriving any person of property without due process of law; and the passage of a resolution by the council of a city, assuming to declare a forfeiture of a contract previously made with a railroad company, under which the company occupies a street with its tracks, and a declaration by the city of its intention to dispossess the company and take possession of the street by the use of its police, is a threatened violation of the constitutional rights of the company, which a federal court has jurisdiction to restrain by injunction.—IRON MOUNTAIN R. CO. OF MEMPHIS v. CITY OF MEMPHIS, U. S. C. C. of App., Sixth Circuit, 96 Fed. Rep. 113.

43. FRAUD—Rescission of Sale.—Equity will rescind a contract for the conveyance of land, in consideration of the transfer of stock in a corporation, induced by false representations of the agent of the owner of the stock as to its value, who claimed to know the facts concerning which the representations were made, where such representations are believed and relied on by the owner of the land, though no relation of confidence existed between them, and the owner of the land was not prevented from investigating the truth of the representations by any fraud of the agent, where he did not investigate the truth of the representations, as to the condition of the corporation, and the value of the stock, and, even if he had investigated, he would not have been able to have learned the truth.—DOW v. SWAIN, Cal., 58 Pac. Rep. 271.

44. FRAUDS, STATUTE OF—Part Performance.—Contract by parents to convey to their son their farm if he would surrender lease of a farm on which he was living, and come and live on their farm, is taken out of the statute by his accepting the offer, surrendering his lease, and moving onto their farm.—PIKE v. PIKE, Mich., 89 N. W. Rep. 5.

45. INJUNCTION—Petition—Sufficiency.—A petition for equitable relief by injunction, where the allegations are of the unconstitutionality of the law or laws under which acts are threatened or being done of which the complaint is made, is not sufficient to invoke the equity powers of the court, unless there are other allegations, which complete a statement of a case for equitable relief.—NEBRASKA TEL. CO. v. CORNELL, Neb., 80 N. W. Rep. 43.

46. INSOLVENCY—Preference—Equitable Assignment.—Dealers in lumber, believing the financial condition of a contractor, who was a customer, was becoming worse, asked him to give orders in payment of lumber to be furnished to erect a house, on the owner, which he consented to do, and the owner agreed to pay orders to the extent of the sums due under the contract. Held not within U. S. § 2141, avoiding payments, directly or indirectly made by an insolvent within four months before insolvency proceedings, to a creditor having reasonable cause to believe him insolvent, and that the payment was made in fraud of the law relating to insolvency; the agreement being made more than four months before insolvency proceedings against the contractor, but the orders being given and payments made within that time.—PRESTON v. RUSSELL, Vt., 44 Atl. Rep. 115.

47. INSURANCE—Construction of Policy.—A provision of a life insurance policy that no suit shall be maintainable thereon "unless the same shall be commenced within twelve months after the death of said insured," is unambiguous, and the limitation will be enforced in accordance with the plain meaning of its terms where the declaration counts on the contract alone, and alleges no extrinsic facts excusing delay in bringing suit.—KETTENRING v. NORTHWESTERN MASONIC AID ASSN., U. S. C. C., N. D. (Ill.), 96 Fed. Rep. 177.

48. INSURANCE—Waiver of Proofs of Loss.—Where, in response to notice of a loss by fire, the general agent of the insurance company sent an adjuster to the place, who examined the premises, and agreed with the insured to leave the question of the amount of the loss to a third person, who was a carpenter, and to accept his estimate, after which the company took no further action in the matter, such action amounted to a waiver of the proofs of loss required by the policy, and rendered inapplicable a requirement for arbitration in case of disagreement.—WHOLLEY v. WESTERN ASSUR. CO., Mass., 54 N. E. Rep. 548.

49. INTEREST—Stipulation for Semi-Annual Payment.—A stipulation in a note for the payment of interest semi-annually extends only to the maturity of the note, and after that time interest must be computed in the ordinary way.—MAGRUDER v. DE HAVEN'S ADMR., Ky., 52 S. W. Rep. 795.

50. MARRIAGE.—Where a marriage ceremony is performed between two persons, and they continue to live and cohabit together as husband and wife, there is a valid marriage, though a decree of divorce from a third person, granted one of them before the ceremony, was not formally filed till afterwards.—PEOPLE v. BOOTH, Mich., 79 N. W. Rep. 1100.

51. MASTER AND SERVANT—Assault by Employee.—If one, who is permitted by the agent of a railroad company to remain in the depot at a time when passengers are not usually there allowed, leave the building, and enter a car standing at the station, and is there discovered in an act of gross immorality, and, upon being required to return to the depot, uses offensive and insulting language to and of the agent of the company who ejected him from the car, and continues, notwithstanding cautioned not to do so, to use such language until the agent of the company is exasperated and commits an assault upon him, the company is not liable for the consequences resulting from such assault, even though the agent be not fully excusable, and the battery inflicted be entirely disproportioned to the insult given.—GEORGIA RAILROAD & BANKING CO. v. HOPKINS, Ga., 33 S. E. Rep. 965.

52. MASTER AND SERVANT — Assumption of Risk.—While a servant assumes the risks of his employment which are apparent to ordinary observation, where there is testimony that the servant was unfamiliar with an appliance furnished for his use, and he was assured of its safety by his foreman, it becomes a question of fact whether he should have known the danger, and he cannot be held, as a matter of law, to have assumed the risk.—SHADFORD v. ANN ARBOR ST. RY. CO., Mich., 80 N. W. Rep. 80.

53. MASTER AND SERVANT — Assumption of Risk by Servant.—In the absence of statutory provision, a switchman employed in the yards of a railroad company assumes the risk incident to unblocked switches and guard rails, where, in general, there are no blocks used in such yards, and the servant has been employed therein for such a length of time that in the exercise of ordinary observation he must have known such fact.—NARRAMORE v. CLEVELAND, ETC. RY. CO., U. S. C. C. of App., Sixth Circuit, 96 Fed. Rep. 298.

54. MECHANICS' LIEN — Description of Land.—Where a building is constructed on the land contemplated by the parties,—the only land which the owners had in a certain village,—there may be a lien, though the contract describes it merely as ground in said village.—JOSSMAN v. RICE, Mich., 80 N. W. Rep. 25.

55. MUNICIPAL CORPORATION—Deeds by Committee—Power.—A deed executed by a committee authorized to execute it in behalf of a municipal corporation is inoperative so far as it purports to convey premises not authorized by the resolution directing the conveyance.—URCH v. CITY OF PORTSMOUTH, N. H., 44 Atl. Rep. 112.

56. MUNICIPAL CORPORATIONS — Negligence — Sidewalks.—Plaintiff, 60 years old and in the exercise of due care, while walking on a principal street of a city fell into an irregular depression worn in the sidewalk about 1 1-2 to 2 feet in area, all sides of which, except on the south, where there was an abrupt depth of about 1 1-2 inches, sloped to a center from 1 1-2 to 3 inches in depth. Held, that such facts did not show

that the walk was not in a reasonably safe condition for public travel, so as to render the city liable for the injury.—JACKSON v. CITY OF LANSING, Mich., 80 N. W. Rep. 8.

57. NATIONAL BANKS — Books of Corporation — Suit against Stockholders.—In a suit between the receiver of a national bank and a stockholder the books of the bank are evidence to establish acts of the corporation and its financial condition at a particular time, though not as to dealings between the corporation and the defendant.—HAYDEN v. WILLIAMS, U. S. C. C. of App., Second Circuit, 96 Fed. Rep. 279.

58. NEGLIGENCE—Pleading.—A declaration in case to recover damages for injuries sustained, or for death occasioned, by the alleged negligence of the defendant, should state the facts upon which the supposed duty of the defendant is founded. It is not enough to allege that the defendant has been guilty of negligence, without alleging in what respect he was negligent, and how he became bound to use care to prevent the injury to the person injured or killed.—BOARDMAN v. CREIGHTON, Me., 44 Atl. Rep. 121.

59. PARTIES — Right of Cestui Que Trust to Sue.—A legatee cannot maintain an action against a former executor of the will for an alleged *devastavit* where there is an administrator c. t. a., except in case the latter cannot properly represent the estate, or refuses to act; and a request by such administrator, in response to a demand for bringing suit, for such information in regard to the evidence as will show the probability of a recovery, cannot be construed as a refusal to sue.—MCGROTTY v. FLETCHER, U. S. C. C., S. D. (N. Y.), 96 Fed. Rep. 264.

60. PRINCIPAL AND SURETY—Release of Surety.—An agreement by a creditor with the principal debtor, made after the debt has become due, without the surety's consent, to forbear the collection of the debt for a definite period if without consideration, does not discharge the surety. A promise by the principal debtor to pay interest upon the debt during the time of forbearance forms no consideration for such forbearance, when the debtor is already bound to pay such interest.—TATUM v. MORGAN, Ga., 33 S. E. Rep. 940.

61. QUO WARRANTO—Title to Office.—Where, in a petition for leave to file information in the nature of a *quo warranto*, the petitioner claims title to the office of mayor of an incorporated city or town, by virtue of having obtained a majority of the legal votes cast at a popular election for this office, and this conclusion is founded solely upon his contention that a manager at one of the precincts opened in said election was not a freeholder, this court will not reverse the judgment of the court below refusing the application, when the evidence on the trial clearly showed that the election manager whose qualification for the position is thus attacked was in point of fact a freeholder.—CRAWLEY v. KNIGHT, Ga., 33 S. E. Rep. 948.

62. RAILROADS—Killing Stock.—The word "marks," in section 2242 of the Civil Code, which makes it the duty of overseers or track menders of railroads to file with the station agents "a list of the different marks and brands of all stock killed upon their respective sections the preceding week," includes only such marks as are placed upon stock by artificial means.—CHURCHILL v. GEORGIA RAILROAD & BANKING CO., Ga., 33 S. E. Rep. 972.

63. RECEIVERS—Ex Parte Application.—A court has no jurisdiction to appoint a receiver for a corporation, either original or ancillary, except in a pending suit, and an *ex parte* application for appointment as an ancillary receiver will not be entertained.—IN RE BRANT, U. S. C. C., S. D. (Cal.), 96 Fed. Rep. 257.

64. REMOVAL OF CAUSES — Citizenship.—Taking as true the plaintiff in error's petition for removal, there were not sufficient facts set out in the declaration of the plaintiff in the court below to authorize the court to hold that the plaintiff in error was a Georgia corporation as to that part of its line where the damages were alleged to have occurred.—SOUTHERN RY. CO. v. HUDGINS, Ga., 33 S. E. Rep. 1011.

65. SUBROGATION — Voluntary Payment. — Where plaintiff made a loan to defendant's husband, who gave a mortgage therefor on his wife's land, acting under a power of attorney, which plaintiff, under a mistake of law, thought authorized the mortgage, and the wife never ratified it, he cannot be subrogated to a prior mortgage on the land, which he and defendant's husband paid out of the loan, and had canceled, such payment being voluntary.—BROWN v. ROUSE, Cal., 58 Pac. Rep. 267.

66. TAXATION—Penalty for Failure of Non-Resident to File Descriptive List.—A non-resident corporation, by listing its lands in this State with the assessor by its local agent, and paying taxes thereon, does not exonerate itself from the penalty prescribed by Ky. St. § 4039, for the failure of a non-resident owner of lands to file a descriptive list, under oath, with the county clerk; the duty being a personal one, which cannot be delegated to an agent.—COMMONWEALTH v. FARMERS' & SHIPPERS' TOBACCO WAREHOUSE CO., Ky., 52 S. W. Rep. 799.

67. TAX SALE—Redemption.—The mere fact that an owner of land, which has been sold for taxes pursuant to a decree in chancery, was mentally incompetent, at the time of the entry of such decree and ever since, and, up to the time of the application to open it, has remained incompetent, to attend to his business affairs, will not authorize a proceeding by a next friend which in effect amounts to granting him the right to redeem from the tax sale after the expiration of the time allowed by law for redemption, when no provision therefor is made by statute.—DUMPHEY v. HILTON, Mich., 80 N. W. Rep. 1.

68. TAX TITLE—Cloud on Title.—In a suit by the owner of the government title of wild land to restrain defendant from removing the timber therefrom, and to remove a cloud from the title, growing out of a tax deed held by defendant, the validity of the decree on which defendant's tax deed rests may be raised.—CASE v. SKINNER, Mich., 79 N. W. Rep. 1093.

69. TROVER AND CONVERSION—Sale Under Attachment.—One who purchases mortgaged property with knowledge of the mortgage, without recognizing the mortgagee's rights, and sells it in hostility to the mortgagee, is liable to him as for a conversion.—MCCOWN v. KITCHEN, Tex., 52 S. W. Rep. 801.

70. WILL—Decree of Distribution of Estate.—A decree of distribution entered in the settlement of an estate, determining the title to real estate under the will of the testator, is conclusive of such title between the parties in interest, or those claiming through them.—MCKENZIE v. BUDD, Cal., 58 Pac. Rep. 199.

71. WILLS—Devise in Remainder.—A will gave to a son of the testator the income for life of a moiety of the residuary estate, and provided that, "on the decease of my said son, then, and not till then, I give and devise the said moiety to their respective children in fee." Held that, construing such language in connection with a further provision that no division or partition of the moiety should be made among the grandchildren until the youngest should reach the age of 21 years, it did not make a present gift to the grandchildren, merely postponing the time of enjoyment until the death of the son, but indicated an intention that the gift should not take effect at all until such time, and hence that all the children of the son living at the time of his death took under the devise.—HARDING v. HARDING, Mass., 54 N. E. Rep. 549.

72. WILL—"Heir" — Latent Ambiguity. — The word "heir" in a will may beconstrued as "legatee" or "devisee," where the will gives to a certain person the proportion coming to testator "as heir of F," the latter having died testate, making testator his residuary legatee, and naming him as executor.—SHAPLEIGH v. SHAPLEIGH, N. H., 44 Atl. Rep. 107.